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No. (1)

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

WILLIAM R. YEE,

Petitioner,

vs.

MICHIGAN SUPREME COURT, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

WILLIAM R. YEE (P35984)
Petitioner, pro se
PO Box 310
Owosso, MI 48867-0310
989 666-2878

QUESTIONS PRESENTED FOR REVIEW

1. Do the courts below err in denying jurisdiction over state courts engaged in a criminal enterprise and conspiracy that violates 18 U.S.C. § 1962 and gives rise to a civil action in the United States District Court, Eastern District of Michigan under an 18 U.S.C. § 1964(c) umbrella a claim with predicate federal claims including 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc., with jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367?

2. Do the courts below err in granting judicial immunity for the Respondents against federal causes of action under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, 18 U.S.C. § 1964(c) and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc.?

3. Do the courts below err in finding that the statute of limitations applies to a continuing conspiracy and torts as described above?

4. Do the courts below err in dismissing a cause of action against Respondents in default for failure to file a timely answer to a complaint properly served?

QUESTIONS PRESENTED FOR REVIEW – Continued

5. Do the courts below err in dismissing a cause of action against any of the respondents below?

6. Do the courts below err in dismissing the cause of action with prejudice?

LIST OF ALL THE PARTIES IN THE PROCEEDINGS BELOW

William Yee, Petitioner; G. Y. Minor Daughter of Petitioner William R. Yee, Petitioner.

29th Circuit Court, Respondent; 35th Circuit Court, Respondent; 71A District Court, Respondent; 7th Circuit Court, Respondent; Patrick A. Aseltyne, Respondent; Richard A. Bandstra, Respondent; Louis J. Belzer, Respondent; Bigler, Berry, Johnston, Sztykiel and Hunt, P. C., Respondent; Honorable Stephen L. Borrello, Respondent; Lynn D. Bowne, Respondent; David Carbajal, Respondent; Thomas L. Casey, Respondent; Honorable Mark J. Cavanaugh, Respondent; Honorable Michael F. Cavanaugh, Respondent; Kelley Cawthorne, Respondent; Honorable James R. Clatterbaugh, Respondent; Prosecuting Attorney Randy O. Colbry, Respondent; Honorable John T. Connolly, Respondent; Thomas A. Connolly, Respondent; Honorable Maura D. Corrigan, Respondent; Edward B. Davison, Respondent; James D. Demis, Jr. CPA, Respondent; Philip L. Dulmage, Respondent; Arnold D. Dunchock, Respondent; Assistant Attorney General James T. Farrell, Respondent; Judge Judith Fullerton, Respondent; Gault Davison, P.C., Respondent; Christine K. Gazella, Respondent; Eric S. Goldstein, Respondent; Governor of Michigan, Jennifer M. Granholm, Respondent; Honorable Richard Allen Griffin, Respondent; Michael J. Guss, Respondent; Harvey Kruse, P.C, Respondent; Honorable Donald E. Holbrook, Jr., Respondent; Robert Hoschner, Respondent; Marcia L. Howe, Respondent;

LIST OF ALL THE PARTIES IN THE PROCEEDINGS BELOW – Continued

Amy L. Husted, Respondent; Steven P. Iamarin, Respondent; Johnson Rosati LaBarge Aseltyne and Field, P.C., Respondent; J. Steven Johnston, Respondent; Frank J. Kelley, Respondent; Honorable Kirsten Frank Kelly, Respondent; Honorable Marilyn J. Kelly, Respondent; Jason D. Kolkema, Respondent; Deputy FOC Daniel J. Loomis, Respondent; Honorable Gerald D. Lostracco, Respondent; Michael J. Mangapora, Respondent; Michael J. Mangapora, P.C., Respondent; S. Peter Manning, Respondent; Magistrate/Court Administrator J. Kevin McKay, Respondent; Honorable Stephen J. Markman, Respondent; Michigan Attorney General, Respondent; Honorable Donald S. Owens, Respondent; Michigan Court of Appeals, Respondent; Plunkett and Cooney, P. C., Respondent; Michigan Supreme Court, Respondent; H. William Reising, Respondent; Honorable Henry W. Saad, Respondent; Christine M. Roché, Respondent; Shiawassee County Friend of the Court, Respondent; Assistant Attorney General Kenneth M. Ross, Respondent; State Court Administrative Office, Respondent; Smith, Martin, Powers and Knier, P. C., Respondent; Alan R. Sullivan, Respondent; Honorable Michael R. Smolenski, Respondent; Honorable Elizabeth A. Weaver, Respondent; Honorable Randy L. Tahvonen, Respondent; Assistant Prosecuting Attorney Craig Wininger, Respondent; Honorable Clifford W. Taylor, Respondent; Honorable Robert P. Young, Jr., Respondent.

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CORPORATE DISCLOSURE STATEMENT

William R. Yee, Petitioner does not own or have any interest in any corporation directly or indirectly involved in this litigation.

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STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction pursuant to Rule 13(1) and 28 U.S.C. § 1254(1) for this Petition for Writ of Certiorari. The Sixth Circuit Court of Appeals entered a judgment affirming the lower court on January 24th, 2008. William Yee filed a timely motion for reconsideration on 2-7-2008 and the Court of Appeals entered an order denying the motion for reconsideration on 2-26-2008.

This Petition for Writ of Certiorari regarding the orders of January 24th, 2008 and 2-26-2008 is timely filed on or before May 26, 2008 pursuant to Rule 13(1) and 13(3).

LIST OF CONSTITUTIONAL PROVISIONS AND STATUTES

The following Constitutional provisions and statutes serve as the basis for Petitioner William Yee's arguments.

AMENDMENTS TO THE UNITED STATES CONSTITUTION. AMENDMENT IV. UNREASONABLE SEARCHES AND SEIZURES.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Amendment V. Criminal actions – Provisions concerning – Due process of law and just compensation.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising

in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

§ 1. Citizenship – Due process of law – Equal protection.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof; are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutes:

18 U.S.C. § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income,

or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person

may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the Respondent from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any

Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985. Conspiracy to interfere with civil rights

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

18 U.S.C. § 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured –

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or

other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Const. 1963, Art. I, § 2

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because

of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

Const. 1963, Art. I, § 16

Sec. 16. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Const. 1963, Art. I, § 24

Sec. 24. (1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process. The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

(2) The legislature may provide by law for the enforcement of this section.

(3) The legislature may provide for an assessment against convicted Respondents to pay for crime victims' rights.

M.C.L. 37.2102

Sec. 102. (1) The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

M.C.L. 37.2301 Sec. 301. As used in this article:

(a) "Place of public accommodation" means a business, or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Place of public accommodation also includes the facilities of the following private clubs:

(i) A country club or golf club.

(ii) A boating or yachting club.

(iii) A sports or athletic club.

(iv) A dining club, except a dining club that in good faith limits its membership to the members of a particular religion for the purpose of furthering the teachings or principles of that religion and not for the purpose of excluding individuals of a particular gender, race, or color.

(b) "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the state, a political subdivision, or an agency thereof or a tax exempt private agency established to provide service to the public, except that public service does not include a state or county correctional facility with respect to actions and decisions regarding an individual serving a sentence of imprisonment.

M.C.L. 37.2701

Sec. 701. Two or more persons shall not conspire to, or a person shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

(b) Aid, abet, incite, compel, or coerce a person to engage in a violation of this act.

(c) Attempt directly or indirectly to commit an act prohibited by this act.

(d) Willfully interfere with the performance of a duty or the exercise of a power by the commission or 1 of its members or authorized representatives.

(e) Willfully obstruct or prevent a person from complying with this act or an order issued or rule promulgated under this act.

(f) Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

M.C.L. 37.2801

Sec. 801. (1) A person alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney's fees.

M.C.L. 600.1715

Sec. 1715. (1) Except as otherwise provided by law, punishment for contempt may be a fine of not more than $250.00, or imprisonment which, except in

those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to perform shall not exceed 30 days, or both, in the discretion of the court.

MCR 2.614(A)(1)

(1) Except as provided in this rule, execution may not issue on a judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after its entry. If a motion for new trial, a motion to alter or amend the judgment, a motion for judgment notwithstanding the verdict, or a motion to amend or for additional findings of the court is fled and served within 21 days after entry of the judgment, execution may not issue on the judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after the entry of the order on the motion, unless otherwise ordered by the court on motion for good cause. Nothing in this rule prohibits the court from enjoining the transfer or disposition of property during the 21-day period.

MCR 3.206(6):

(6) A party who requests spousal support in an action for divorce, separate maintenance, annulment, affirmation of marriage, or spousal support, must allege facts sufficient to show a need for such support and that the other party is able to pay.

A CONCISE STATEMENT OF THE CASE

Petitioner William Yee seeks review of the Orders and Judgments of Dismissal with and without Prejudice rendered by the United States District Court, Eastern District of Michigan and Affirmed by the United States Court of Appeals for the 6th Circuit.

The judgments were rendered without trial or evidentiary hearings of any kind, and were issued as orders and summary judgments by the United States District Court, Eastern District of Michigan:

R-116 1/10/2007: MEMORANDUM OPINION AND ORDER GRANTING MOTIONS TO DISMISS;

R-156 1/23/2007: ORDER GRANTING RESPONDENT LOUIS J. BELZER'S FED. R. CIV. P. 12(b)(6) MOTION TO DISMISS;

R-1581/23/2007: MEMORANDUM OPINION AND ORDER GRANTING ATTORNEY RESPONDENTS' MOTIONS TO DISMISS;

R-162 1/24/2007: MEMORANDUM OPINION AND ORDER GRANTING RESPONDENT LYNN D. BOWNE'S MOTION TO DISMISS;

R-199 4/6/2007: ORDER DISMISSING CLAIMS AGAINST RESPONDENTS DUNCHOCK, HUSTED, DEMIS AND HOSCHNER;

R-206 4/19/2007: ORDER DENYING PETITION TO REMOVE AND DISMISSING CASE FOR LACK OF JURISDICTION;

R-207 4/19/2007: JUDGMENT.

The 6th Circuit Court of Appeals Affirmed with:

1/24/2008 ORDER filed: AFFIRMED; and

2/26/2008 ORDER filed DENYING all Appellees' motions for costs/sanctions. DENYING appellant's motion for panel rehearing.

U.S. DISTRICT COURT JURISDICTION

A criminal enterprise manifested by a pattern of racketeering conduct by the Respondents in violation of 18 U.S.C. § 1962 giving rise to predicate federal claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc., giving rise to an 18 U.S.C. § 1964(c) umbrella a claim with U.S. District Court jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367.

ARGUMENT FOR ALLOWANCE OF THE WRIT

Given that this is a matter of law, review is de novo as the district court's dismissal was based on *Rooker-Feldman* grounds, *McCormick v. Braverman*,

451 F.3d 382, 389 (6th Cir. 2006), cert. denied, 128 S.Ct. 41 (2007).

This court should allow the writ of certiorari pursuant to Rule 10(a) because the United States District Court, Eastern District of Michigan, the United States Court of Appeals, 6th Circuit and the Michigan Courts, Michigan Attorney General, Michigan Department of Environmental Quality, Judges, Prosecutors, Officers of the Courts, and law firms and practicing attorneys have departed so far from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

Petitioner filed a Complaint, R-2 12-04-2008, which alleged a criminal enterprise manifested by a pattern of racketeering conduct by the Respondents in violation of 18 U.S.C. § 1962 giving rise to predicate federal claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc., giving rise to an 18 U.S.C. § 1964(c) umbrella a claim with jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367.

The complaint alleged that Respondent Michigan Courts, Michigan Attorney General, Michigan Department of Environmental Quality, Judges,

Prosecutors, Officers of the Courts, law firms and practicing attorneys formed a criminal enterprise that manifested a pattern of racketeering activity in violation of 18 U.S.C. § 1962 giving rise to predicate federal claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc., giving rise to an 18 U.S.C. § 1964(c) umbrella a claim with jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367.

The United States District Court for the Eastern District of Michigan did not conduct a trial or any evidentiary hearings.

The United States District Court for the Eastern District of Michigan issued a series of orders and dismissals R-116 1/10/2007; R156 1/23/2007; R-1581/23/2007; R-162 1/24/2007; R-199 4/6/2007; R-206 4/19/2007; culminating in a judgment R-207 4/19/2007.

Petitioner Stated a Claim

Given that this is a matter of law, review is de novo as the district court's dismissal was based on *Rooker-Feldman* grounds, *McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006), cert. denied, 128 S.Ct. 41 (2007).

The United States District Court for the Eastern District of Michigan, R-116 pages 3-4 1/10/2007, stated an obligation to give a presumption in favor of William Yee's claims, "considering a Rule 12(b)(6) motion must accept the well-pled factual allegations of the complaint as true and construe all reasonable inferences in favor of the Petitioner. *Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995)."

Judicial Immunity Granted but Not Effective

Given that this is a matter of law, review is de novo pursuant to *McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006), cert. denied, 128 S.Ct. 41 (2007).

The United States District Court for the Eastern District of Michigan then granted judicial immunity to the Respondents pursuant to *Mireles v. Waco*, 502 U.S. 9, 112 S.Ct. 286 (1991); *Ireland v. Tunis*, 113 F.3d 1435, 1440-43 (6th Cir. 1997); *Barrett v. Harrington*, 130 F.3d 246 (6th Cir. 1997), cert. denied, 118 S.Ct. 1517 (1998); *Ross v. Consumers Power Co.*, 420 Mich. 567, 632, 363 N.W.2d 641, 667 (1985) (Absolute immunity is granted to judges, even for malicious acts, as long as they are acting within their judicial authority). Cf., M.C.L. § 691.1407(5) ("Judges . . . are immune from tort liability for injuries to persons or damages to property whenever they are acting within the scope of their judicial . . . authority.")

Criminal conduct is not within the judicial authority of Michigan Judges. Misconduct in office by

the judges, prosecutors, attorney generals and state officials as contemplated by *People v. Coutu*, 235 Mich. App. 695, 705; 599 N.W.2d 556 (1999) and M.C.L. 750.505; MSA 28.773;

Obstruction of justice and judicial tyranny is described in *People v. Thomas,* 438 Mich. 448, 456-457; 475 N.W.2d 288 (1991) and footnote 5 at page 458, *id.* and M.C.L. 750.505; MSA 28.773.

Judicial immunity does not exist because Petitioner alleged criminal conduct and abuse of authority and predicate crimes committed in the course of violation of 18 U.S.C. § 1962 pursuant to *United States v. Jenkens*, 902 F.2d 459, 461 (6th Cir. 1990).

The amended complaint listed acts by each Appellee in furtherance of the conspiracy in paragraph 9 (R.2, page 9); paragraph 153, (R.2, page 41); paragraph 159, (R.2, page 42); paragraph 170 (R.2, page 44-45); paragraph 234, (R.2-2, page 13); paragraph 238, (R.2-2, page 14); paragraph 241-242, (R.2-2, page 14-15); paragraph 251, (R.2-2, page 16); paragraph 264, (R.2-2, page 19); paragraph 271, (R.2-2, page 21); paragraph 287, (R.2-2, page 25-27); paragraph 293, (R.2-2, page 28); paragraph 306, (R.2-2, page 31); paragraph 318, (R.2-2, page 32); paragraph 319, (R.2-2, page 33); paragraph 323, (R.2-2, page 34); paragraph 327, (R.2-2, page 34-35); paragraph 337, (R.2-2, page 36); paragraph 339, (R.2-2, page 37-38); paragraph 350, (R.2-2, page 39); paragraph 357, (R.2-2, page 41); paragraph 369-374, (R.2-2, page 43-44); paragraph 376, (R.2-2, page 45);

paragraph 381, (R.2-2, page 46); paragraph 402 (R.2-2, Page 49); paragraph 446 (R.2-3, page 6-7); paragraph 458 (R.2-3, Page 9); paragraph 472, (R.2-3, page 12); paragraph 520, (R.2-3, page 20); paragraph 521, (R.2-3, page 21); paragraph 522, (R.2-3, page 121); paragraph 550, (R.2-3, page 126-127); paragraph 551, (R.2-3, page 27); paragraph 563, (R.2-3, page 29); paragraph 568 (R.2-3, page 31); paragraph 654 page (R.2-3, page 49-50), see Appendix at pages 68-69.

The amended complaint alleged that the Respondent Judges and attorneys violated numerous court rules including MCR 2.116(G) paragraph 171 (R.2, page 45); MCR 2.116(C)(4), MCR 2.116(C)(8), MCR 2.403(M), paragraph 173 (R.2, page 45-46); MCR 2.119, MCR 2.108(B) paragraph 181 (R.2, page 47); MCR 2.116(C)(8), MCR 2.116(C)(7) paragraph 186 (R.2, page 47-48); MCR 3.903(A)(18)(b), formerly MCR 5.903(A)(18)(b), paragraph 241-242, (R.2-2, page 64-65); MCR 3.923, formerly MCR 5.923 paragraph 251-262, (R.2-2, page 66); MCR 2.119(F) paragraph 271, (R.2-2, page 71); MCR 5.001 and MCR 2.119(F)(1) paragraph 276, (R.2-2, page 72-73); MCR 2.209 paragraph 323, (R.2-2, page 84); MCR 3.206(6) paragraph 471 (R.2-2, Page 112); MCR 3.206(6) Paragraph 471 (R.2-2, Page 112); MCR 3.206(6); MCR 2.614(A)(1) paragraph 480, (R.2, page 114); MCR 7.205(A) paragraph 498, (R.2, page 117); MCR 2.614(A)(1) paragraph 521, (R.2, page 121); MCR 8.111(D) paragraph 550, (R.2, page 126-127), see Appendix at pages 69-70.

Judicial Immunity does not apply because Michigan waives immunity for civil rights violations pursuant to conduct authorized by the state agencies and with the authority of the state agencies pursuant to policy pursuant to *York v. Detroit* (AFTER REMAND), 438 Mich. 744, 754-755 (1991) and immunity is waived under the Elliot Larson Civil Rights Act per *Manning v. Hazel Park*, 202 Mich. App. 685, 699; 509 N.W.2d 874 (1993).

Judicial Immunity and quasi judicial immunity does not apply because The Judges, Prosecutors and State Officials were acting outside the scope of their official duties in their individual capacities while committing crimes against the Petitioner William Yee per *Skinner v. Govorchin*, 05-2458 (6th Cir. 2006), R.2 1st Amended Complaint, page 4 at § 4.

Judicial Immunity does not apply because Petitioner William Yee is a victim of these Respondents' crimes and has a right to have Respondents prosecuted for their crimes in Michigan pursuant to Const. 1963, Art. I, § 24; and *AAUP v. Morgan*, 100 Mich. App. 219, 227; 298 N.W.2d 886 (1980):

> "When a statute provides a beneficial right but no civil remedy for its securance, the common law on its own hook provides a remedy, thus fulfilling law's pledge of no wrong without a remedy." *B F Farnell Co v. Monahan,* 377 Mich. 552, 555; 141 N.W.2d 58 (1966).

Michigan waives 11th Amendment Immunity:

Given that this is a matter of law, review is de novo pursuant to *McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006), cert. denied, 128 S.Ct. 41 (2007).

Petitioner has alleged civil rights violations under both state and federal law in the 16 Counts of the 1st Amended Complaint, R. 2, and Michigan waives sovereign immunity pursuant to the Elliot Larson Civil Rights Act, M.C.L. 37.2101 *et seq.*, See M.C.L. 37.2103(g) and 37.2202(a); and *Manning v. Hazel Park*, 202 Mich. App. 685, 699; 509 N.W.2d 874 (1993), "governmental immunity is not a defense to a claim brought under the Civil Rights Act." and *York v. Detroit* (AFTER REMAND), 438 Mich. 744, 754-755 (1991)

> In order to establish a claim against the City of Detroit under 42 U.S.C. § 1983, plaintiff was required to show a municipal policy or custom which caused a violation of the decedent's constitutional rights. Monell v. New York City Dep't of Social Services, 436 U.S. 658, 690-691; 98 S Ct 2018; 56 L Ed 2d 611 (1978).[3]
>
> [3]The issue in this case is the liability of the city, not that of individual officers. Since the city cannot be liable on a theory of respondeat superior, Monell, 436 U.S. 691, the city's liability must be predicated on a showing that the plaintiff's injuries are the result of

municipal policy. See Roberts v. City of Troy, 773 F.2d 720 (CA 6, 1985).

The Statute of Limitations Does Not Apply

Given that this is a matter of law, review is de novo pursuant to *McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006), cert. denied, 128 S.Ct. 41 (2007).

The statute of limitations applies because of the continued flooding of Petitioners' property. Also the alleged criminal conspiracy is a continuing tort analogous to a continuing trespass as contemplated by *Sable v. General Motors Corp.*, 90 F.3d 171, 176 (6th Cir. Mich 1996):

> Plaintiff argues that its claim is not barred by the three-year statute of limitations because defendant's continuing trespass tolls the limitations period. Plaintiff quotes *Oakwood Homeowners Ass'n, Inc. v. Ford Motor Co.*, 77 Mich.App. 197, 258 N.W.2d 475 (1977) for the proposition that pollution constitutes a continuing tort: "Therefore, in the normal pollution case, since the tort is committed every day, the cause of action will accrue up to the time of trial." Id. At 220 n. 7, 258 N.W.2d 475. Plaintiff also cites Michigan cases in which a permanent sewer line running under a plaintiff's house was held to be a continuing tort that tolled the limitations period. See, e.g., *Defnet v. City of Detroit*, 327 Mich. 254, 41 N.W.2d 539 (1950); *Hodgeson v. Genesee*

> *County Drain Comm*," 52 Mich.App. 411, 217 N.W.2d 395 (1974). Plaintiff argues that the permanent trespass of hazardous waste on its land is analogous to the permanent presence of the sewage lines held to constitute a continuing trespass in *Defnet and Hodgeson*. . . . The Court held that plaintiff's claim was not tolled under the continuing-wrongful-acts doctrine because "a continuing wrong is established by continual _ortuous acts, not by continual harmful effects from an original completed act."

Rooker-Feldman does not apply

Given that this is a matter of law, review is de novo pursuant to *McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006), cert. denied, 128 S.Ct. 41 (2007).

Petitioner is alleging injuries as a product of a criminal conspiracy and enterprise independent of the state court judgments, and the 6th Circuit court has determined that the *Rooker-Feldman* doctrine applies only when a Petitioner complains of injury from the state-court judgment itself. *Coles v. Granville*, 448 F.3d 853, 858 (6th Cir. 2006).

See *Powers v. Hamilton County*, 501 F.3d 592, 606 (6th Cir. 2007):

> The *Rooker-Feldman* doctrine has no bearing on Powers's claims because he does not allege that he was deprived of his constitutional rights by the state-court judgment,

> but rather by the Public Defender's conduct in failing to ask for an indigency hearing as a prerequisite to his incarceration. Assertions of injury that do not implicate state-court judgments are beyond the purview of the *Rooker-Feldman* doctrine. See *McCormick v. Braverman*, 451 F.3d 382, 392-93 (6th Cir.2006) (holding *Rooker-Feldman* inapplicable because the plaintiff did not attack the state-court judgments but "assert[ed] independent claims that those state court judgments were [improperly] procured by" the defendants); *Todd v. Weltman, Weinberg, & Reis Co.*, L.P.A., 434 F.3d 432, 436-37 (6th Cir.2006) (holding *Rooker-Feldman* not triggered because the plaintiff did not allege that he was injured by the state-court judgment, but instead filed an independent federal claim that he was injured by the defendant's filing of a false affidavit in the state-court proceeding).
>
> For these reasons, we reject the Public Defender's Younger and *Rooker-Feldman* arguments.

The *Rooker-Feldman* doctrine fails to apply because Judge Lostracco is still conducting proceedings, see *Raymond v. Moyer*, 501 F.3d 548, 551 (6th Cir. 2007):

> *Rooker-Feldman* doctrine, then this case falls squarely within the class of cases over which the lower federal courts do not have jurisdiction: "cases brought by state-court losers complaining of injuries caused by state-court

> judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp.*, 544 U.S. at 284, 125 S.Ct. 1517.

See *Abbott v. Michigan*, 474 F.3d 324, 328-329 (6th Cir. 2007):

> Regarding whether plaintiffs' claims of specific injuries that they have suffered implicate the *Rooker-Feldman* doctrine, we have found the Second Circuit's guidance particularly instructive:
>
> Suppose a state court, based purely on state law, terminates a father's parental rights and orders the state to take custody of his son. If the father sues in federal court for the return of his son on grounds that the state judgment violates his federal substantive due-process rights as a parent, he is complaining of an injury caused by the state judgment and seeking its reversal. This he may not do, regardless of whether he raised any constitutional claims in state court, because only the Supreme Court may hear appeals from state-court judgments.
>
> . . . . Suppose a plaintiff sues his employer in state court for violating both state anti-discrimination law and Title VII and loses. If the plaintiff then brings the same suit in federal court, he will be seeking a decision from the federal court that denies the state court's conclusion that the employer is not liable, but he will not be alleging injury from

> the state judgment. Instead, he will be alleging injury based on the employer's discrimination. The fact that the state court chose not to remedy the injury does not transform the subsequent federal suit on the same matter into an appeal, forbidden by *Rooker-Feldman*, of the state-court judgment.

Dismissal with prejudice is void for lack of jurisdiction.

Given that this is a matter of law, review is de novo pursuant to *McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006), cert. denied, 128 S.Ct. 41 (2007).

United States District Court, Eastern District of Michigan did find lack of jurisdiction based upon the *Rooker-Feldman* doctrine, dismissal with prejudice is void and abuse of discretion on its face. See *Days Inns Worldwid, Inc. v. Patel*, 445 F.3d 899, 907 (6th Cir. 2006), "only judgments that show a jurisdictional defect on the face of the record are classified as void judgments." See *Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006), "This is because Rule 60(b)(4) authorizes relief from judgment where a judgment is void for lack of jurisdiction, and denying a motion to vacate a void judgment is a per se abuse of discretion."

See *Catz v. Chalker*, 142 F.3d 279, 289 (6th Cir. 1998), "there is no time limit in which relief from a void judgment or order must be sought. *Martin v. Martin*, 893 P.2d 11, 14 (Ariz.Ct.App. 1994)." See

Hooks v. Hooks, 771 F.2d 935, 949 (6th Cir. 1985), "'Both Texas and federal authorities recognize that only void judgments as opposed to voidable judgments may be collaterally attacked, and that only judgments which show a jurisdictional defect on the face of the record are classified as void judgments.' *Little v. Celebrezze*, 259 F. Supp. 9, 11 (N.D.Tex. 1966)."

RELIEF REQUESTED

Petitioner William Yee respectfully requests that the United States Supreme Court find that pursuant to Rule 10(a) the United States District Court, Eastern District of Michigan, the United States Court of Appeals, 6th Circuit and the Michigan Courts, Michigan Attorney General, Michigan Department of Environmental Quality, Judges, Prosecutors, Officers of the Courts, and law firms and practicing attorneys have departed so far from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

Petitioner William Yee respectfully requests that the United States Supreme Court grant William Yee a Writ of Certiorari to appeal the orders of the courts below which are found in the appendix to this Petition for Writ of Certiorari.

Respectfully submitted,

WILLIAM R. YEE©

May 23, 2008

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-1667

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM YEE, Plaintiff-Appellant G.Y., Minor Daughter of Plaintiff William R. Yee, Plaintiff, v. STATE COURT ADMINISTRATIVE OFFICE, et al., Defendants-Appellees.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (Filed Jan. 28, 2008)

ORDER

Before: KENNEDY, MARTIN, and COLE, Circuit Judges.

William Yee, a Michigan attorney proceeding pro se, appeals a district court judgment dismissing his civil rights complaint. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking treble monetary damages and attorney fees, Yee filed a 160-page complaint in which he

named seventy-one defendants. Included among the defendants are the Michigan Supreme Court and all of the Justices of the Michigan Supreme Court; the Michigan Court of Appeals and the judges of that court; a number of Michigan Circuit and District Courts and judges of those courts; the State Court Administrator's Office; the Michigan Attorney General's Office, former Michigan Attorney General and Assistant Attorneys General; a number of county prosecutors and assistant prosecutors; several state mediators; The Shiawasee County Friend of the Court and employees of the Shiawassee County Friend of the Court; a number of attorneys and law firms who represented Yee's apponents in several previous Michigan state court actions; and, Yee's ex wife.

Yee complained of adverse state court rulings concerning him and (1) his claims of damage to real property owned by him resulting from a rise in the lake level of Bambi Lake in Shiawassee County and (2) his divorce from, and custody battle with, his ex-wife Christine Roche. He claimed that the defendants conspired against him to deprive him of property and money and violated his civil rights in the course of the lake level and divorce litigation. The district court initially dismissed all of the judicial defendants, the Attorney General defendants, the county prosecutor defendants and the mediator defendants on the basis of absolute judicial and quasi-judicial immunity. The court also noted that there were a number of other grounds that would warrant dismissal of Yee's claims,

including the statute of limitations bar, and the application of the *Rooker-Feldman* and collateral estoppels doctrines. Thereafter, the district court dismissed the remaining attorney defendants on the grounds that Yee's claims were barred by the *Rooker-Feldman* doctrine, the doctrine of collateral estoppel, and the statute of limitations. The district court held that the foregoing legal principles applied equally to those defendants previously dismissed on the grounds of judicial and quasi-judicial immunity.

Yee appeals. He essentially reasserts the claims set forth in the district court. The parties have filed briefs, and a number of defendants move the court to sanction Yee pursuant to Fed. R. App. P. 38. Yee moves for a stay in proceedings.

Under the *Rooker-Feldman* doctrine, federal courts lack jurisdiction to review a case litigated and decided in state court, because only the United States Supreme Court has jurisdiction to correct state court judgments. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 483 n. 16 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 415-16 (1923); *Patmon v. Michigan Supreme Court,* 224 F.3d 504, 506-07 (6th Cir. 2000). Federal courts also lack jurisdiction to review constitutional claims that are inextricably intertwined with the state court's decision. *Feldman,* 460 U.S. at 486-87; *Patmon,* 224 F.3d at 509-10. A plaintiff's claims are inextricably intertwined with the state court's decision if the federal claims can succeed only to the extent that the state court wrongly decided the issues before it, *Catz v.*

Chalker, 142 F.3d 279, 293 (6th Cir. 1998), and if the federal claims assert specific challenges to the state court proceeding, rather than a general challenge to the constitutionality of the state law. *Patmon,* 224 F3d at 509-10; *Catz,* 142 F.3d at 293.

Yee's federal claims assert specific challenges to the state court proceedings. Yee's claims stem from state court litigation he was involved in and which resulted in rulings that were adverse to his position. One such action had to do with the water level of the lake on which he owned property. The second such action had to do with his divorce and custody of his child. Yee does not attack the constitutionality of the proceedings themselves or challenge the statute or authority for the state court proceedings; rather he contends that the seventy-one defendants conspired to deprive him of property and money and violated his civil rights in the course of the lake level and divorce litigation. Thus, the *Rooker-Feldman* doctrine applies to Yee because he is a state court loser "complaining of injuries cased (*sic*) by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgment." *Exxon Mobil Corp. v. Saudi Basic Indust. Corp.,* 544 U.S. 280, 284 (2005).

Finally, a number of defendants, in their appellate briefs, request this court to impose sanctions and costs against Yee for filing a frivolous appeal. *See* Fed. R. App. P. 38; *Burlington N. R.R. Co. v. Woods,* 480 U.S. 1, 4 (1987). An appeal should be considered frivolous only "if it is obviously without merit and is

prosecuted for delay, harassment, or other improper purposes." *NLRB v. Akron Paint & Varnish Co.,* 985 F.2d 852, 855 (6th Cir. 1992). Rule 38 of the Federal Rules of Appellate Procedure provides that the court can only impose sanctions for frivolous appeal if the appellees file a separate motion or if the court gives notice to the appellant. Raising the issue of sanctions in an appellate brief does not sufficiently call the question to the appellant's attention. Therefore, the defendants must file a separate motion for sanctions pursuant to Fed. R. App. P. 38. Consequently, we deny the request for sanctions at this time. Defendants may seek sanctions by a separate motion filed within ten days after the entry of this order.

Accordingly, we affirm the district court's judgment pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit. We deny the requests for sanctions without prejudice and deny the motion for a stay in the proceedings.

ENTERED BY ORDER OF THE COURT

/s/ [Illegible]
Clerk

2007 WL 1198905

United States District Court,
E.D. Michigan,
Southern Division
William R. **YEE**, Plaintiffs,
v.
MICHIGAN SUPREME COURT, et al.,
Defendants.
No. 06-CV-15142-DT. .
April 19, 2007.

William R. Yee, Owosso, MI, pro se.

ORDER DENYING PETITION TO REMOVE AND DISMISSING CASE FOR LACK OF JURISDICTION

GERALD E. ROSEN, United States District Judge.

On April 6, 2007, this Court entered an Order to Show Cause directing Plaintiff to show cause in writing why the remaining claims in this case against the only two remaining Defendants, Phillip Dulmage and Christine Roche, should not be dismissed pursuant to 28 U.S.C. § 1367(c)(3). In response, on April 11, 2007, Plaintiff filed a "Petition to Remove" two state court cases – *Yee v. Dulmage,* Shiawassee County Circuit Court No. 02-7749-CZ-L and *Roche v. Yee,* Shiawassee County Circuit Court No. 95-5692-DM – and then filed an "Answer to Order to Show Cause" on April 13, 2007, incorporating therein his April 11 Petition to Remove.

As an initial matter, the Court notes that both of the state court cases which Plaintiff has attempted to remove to this Court are *closed* cases. As Plaintiff himself admits Judgments (not favorable to Mr. Yee) were entered in both of those cases. The state court dismissed *Yee v. Dulmage* for failure to state a claim upon which relief could be granted, and a consent judgment of divorce was entered in *Roche v. Yee*. Plaintiff's appeals of those decisions were unsuccessful. Therefore, there is no "case or controversy" to remove to this Court.[1]

Furthermore, even if there were a live action pending in state court, the law is clear that a plaintiff is not allowed to remove a state court action to federal court, as removal statutes permit only *defendants* to remove.

28 U.S.C. § 1441 governs removal of actions. This section states in relevant part:

> Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed ***by the defendant or the defendants***, to the district court of the United States for the district and division embracing the place where such action is pending. . . .

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[1] Indeed, as this Court has already held in previous rulings, the *Rooker-Feldman* doctrine precludes this Court from exercising jurisdiction over these concluded state court proceedings.

28 U.S.C. § 1441(a). *See also* 28 U.S.C. § 1443 (providing that certain civil rights actions and criminal prosecutions commenced in state court "may be removed **by the defendant** to the district court of the United States for the district . . . wherein it is pending).

"As the statutory language makes plain, only 'the defendant or the defendants' may remove under § 1441(a)." *First Nat'l Bank of Pulaski v. Curry,* 301 F.3d 456, 461 (6th Cir.2002). Indeed, it has long been recognized that, "[a] plaintiff who commences his action in a state court cannot effectuate removal to a federal court even if he could have originated the action in a federal court." *Oregon Egg Producers v. Andrew,* 458 F.2d 382, 383 (9th Cir.1972). *See also McCane v. McCane,* 47 F. Supp. 2d 848, 849 (E.D.Mich.1999). Plaintiff, thus, lacks the authority under 28 U.S.C. § 1441 to remove his own actions from state to federal court.[2]

Other than his attempt to resuscitate these state court decisions, Plaintiff offers nothing more than a repetition of his Complaint claims in responding the Court's Order to Show Cause. As the Court noted in its April 6 Order, the only Complaint claims

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[2] Even if Plaintiff could remove a case, his purported removal here is untimely. *See* 28 U.S.C. § 1446(b) (requiring that the notice of removal of a civil action be filed within 30 days after the receipt of the initial pleading setting forth the claim upon which such action is based).

remaining in this case[3] are Plaintiff's claims against two non-diverse Defendants, his former attorney, Phillip Dulmage, and his ex-wife, Christine Roche, arising out of their alleged theft of Yee's personal property. Plaintiff does not dispute that these are state law claims and are before this Court only on the basis of "supplemental jurisidiction" pursuant to 28 U.S.C. § 1367(a).[4]

However, 28 U.S.C. § 1367(c) provides that

> The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if –
>
> * * *
>
> (3) the district court has dismissed all claims over which it has original jurisdiction. Plaintiff has failed to show good cause why the Court should retain jurisdiction over the remaining state law claims in this action. Therefore, pursuant to Section 1367(c)(3), having dismissed all claims over which it has original jurisdiction, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims against Defendants Dulmage and Roche.

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[3] All of Plaintiff's other claims against the other 69 Defendants have been dismissed.

[4] Plaintiff now also alleges in his Response that Defendant Dulmage physically assaulted him. An assault or battery claim is also a state law claim.

CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Plaintiff's Petition to Remove Shiawassee Circuit Court Case No. 02-7749-CZ-L, *Yee v. Dulmage* and Case No. 95-5692-DM, *Roche v. Yee,* is DENIED.

IT IS FURTHER ORDERED that the remaining claims in this case are DISMISSED pursuant to 28 U.S.C. § 1367(c)(3).[5]

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[5] On March 15, 2007, the Court put Plaintiff on notice that he would be subject to Rule 11 sanctions if he filed any more frivolous pleadings. The Court finds Plaintiff's Petition to Remove to be such a frivolous pleading. However, inasmuch as the Court is ordering the dismissal of this case, it will not impose sanctions at this time; but if Plaintiff files any further frivolous pleadings, it will not hesitate to do so.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM R. YEE,

Plaintiffs,

vs.

MICHIGAN SUPREME COURT, et al.,

Defendants.
_____/

No. 06-CV-15142-DT

Hon. Gerald E. Rosen

JUDGMENT

(Filed April 19, 2007)

At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on April 19, 2007

PRESENT: Honorable Gerald E. Rosen United States District Judge

In a series of Orders entered by this Court over the course of the preceding three months, the Court has dismissed all of Plaintiff's claims against all of the Defendants in this action. Accordingly,

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a JUDGMENT OF DISMISSAL be, and hereby is, entered. This Judgment of Dismissal is with prejudice as to all of Plaintiff's claims in this action except Plaintiff's state law claims against Defendants Phillip Dulmage and Christine Roche. With respect to the state law claims against these two

Defendants only, this case is dismissed for lack of jurisdiction pursuant to 28 U.S.C. § 1367.

/s/ Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: April 19, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 19, 2007, by electronic and/or ordinary mail.

/s/ LaShawn R. Saulsberry
Case Manager

2007 WL 1059517

United States District Court,
E.D. Michigan,
Southern Division.
William R. **YEE**, Plaintiffs,
v.
MICHIGAN SUPREME COURT, et al., Defendants.
No. 06-CV-15142-DT.
April 6, 2007.

William Yee, Owosso, MI, pro se.

G. Y., pro se.

H. William Reising, Plunkett & Cooney (Flint), Flint, MI, pro se.

Michael J. Mangapora, Michael J. Mangapora, P.C., Flint, MI, pro se.

Lynn D. Bowne, Owosso, MI, pro se.

Arnold D. Dunchock, Corunna, MI, pro se.

Philip L. Dulmage, Flint, MI, pro se.

Dawn C.M. Jack, MI Dept of Atty. Gen. (Public Employment), Lansing, MI, Michael J. Gildner, Simen, Figura, (Flint), H. William Reising, Plunkett & Cooney (Flint), Flint, MI, Dale R. Burmeister, Harvey Kruse (Troy), Eric S. Goldstein, J. Steven Johnston, Bigler, Berry, (Troy), Troy, MI, William C. Brown, Brown And Stewart (Owosso), Owosso, MI, for Defendants.

ORDER DISMISSING CLAIMS AGAINST DEFENDANTS DUNCHOCK, HUSTED, DEMIS AND HOSCHNER

GERALD E. ROSEN, United States District Judge.

This matter is presently before the Court on the Motions to Dismiss filed by Defendants Robert Hoschner [Docket # 161] and James D Demis, Jr. [Docket # 168]. Having reviewed these motions, Plaintiff's responses, the Answers to Plaintiff's Complaint filed by Defendants Arnold Dunchock and Amy Husted, and the Court's entire record of this matter, pursuant to Eastern District of Michigan Local Rule 7.1(e)(2), the Court has determined that oral argument is not necessary.

The Court has previously summarized the pertinent facts of this case in prior Opinions. Briefly stated, Plaintiff William Yee complains in this action of adverse Michigan state court rulings concerning him and (1) his claims of damage to real property owned by him resulting from a rise in the lake level of Bambi Lake and (2) his divorce from, and custody battle with, his ex-wife, Christine Roche.

Defendants Robert Hoschner and Amy Husted represented Christine Roche in the divorce/custody action.[1] Defendant Arnold Dunchock represented Plaintiff Yee. The adverse rulings in the divorce/custody

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[1] Defendant Phillip [sic] Dulmage also represented Mr. Yee in the state court proceedings.

action complained of by Plaintiff occurred in 2000-2001. *See* Michigan Court of Appeals Nos. 225478 and 237869 (Dockets available on the internet at www.courtofappeals.mjud.net). Plaintiff unsuccessfully appealed these rulings to the Michigan Court of Appeals. *See id.* He thereafter sought, but was denied, leave to appeal to the Michigan Supreme Court. *Id.* His petition for a writ of certiorari to the United States Supreme Court was also denied. *Id.*

The Court has previously held that Plaintiff's claims against the various attorneys who represented and opposed him in connection with the state court actions concerning the water level of Bambi Lake were barred by the *Rooker-Feldman* doctrine, the doctrine of collateral estoppel, and/or the applicable statutes of limitations. *See* January 23, 2007 Memorandum Opinion and Order Granting Attorney Defendants' Motions to Dismiss.

The Court finds that these same reasons bar Plaintiff's claims against Attorneys Dunchock, Husted and Hoschner, and also bar Plaintiff's claims against James D. Demis, Jr., an accountant who testified in Shiawassee County Circuit Court on behalf of Plaintiff's ex-wife in the divorce action.

Therefore, for the reasons stated in the Court's January 23, 2007 Memorandum Opinion and Order, which is hereby incorporated by reference,

IT IS HEREBY ORDERED that Plaintiff's claims against Defendants Dunchcok [sic], Hoschner, Husted and Demis are DISMISSED, with prejudice.[2]

[2] This ruling also applies to Plaintiff's claims against Defendants Phillip [sic] Dulmage and Christine Roche which arise out of the divorce/custody proceeding.

2007 WL 214261

United States District Court,
E.D. Michigan,
Southern Division.
William R. **YEE**, Plaintiffs,
v.
MICHIGAN SUPREME COURT, et al., Defendants.
No. 06-CV-15142-DT.
Jan. 24, 2007.

William Yee, Owosso, MI, pro se.

H William Reising, Plunkett & Cooney (Flint), Flint, MI, pro se.

Michael J. Mangapora, Flint, MI, pro se.

Lynn D. Bowne, Owosso, MI, pro se.

Arnold D. Dunchock, Corunna, MI, pro se.

Philip L. Dulmage, Flint, MI, pro se.

Dawn C.M. Jack, MI Dept of Atty Gen (Public Employment), Lansing, MI, Michael J. Gildner, Simen, Figura, (Flint), Flint, MI, Dale R. Burmeister, Harvey Kruse (Troy), Eric S. Goldstein, J. Steven Johnston, Bigler, Berry, Troy, MI, William C. Brown, Brown and Stewart (Owosso), Owosso, MI, for Defendants.

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT LYNN D. BOWNE'S MOTION TO DISMISS

GERALD E. ROSEN, United States District Judge.

I. *INTRODUCTION*

On January 10, 2006, this Court entered an Opinion and Order dismissing the Judicial Defendants, Attorney General Defendants, County Prosecutor Defendants, Mediator Defendants, and Friend of the Court Defendants finding that all of these defendants are cloaked with absolute judicial and quasi-judicial immunity. The Court subsequently dismissed Plaintiff's claims against 17 Attorney Defendants who represented various parties who opposed Yee in prior Michigan state court proceedings on *Rooker-Feldman,* collateral estoppel and statute of limitations grounds. This matter is now before the Court on the motion for dismissal filed by Defendant Lynn D. Bowne.

Defendant Bowne is an attorney who was appointed by the Shiawassee County Circuit Court to serve as the guardian ad litem for Plaintiff Yee's children in connection with parenting time and custody issues litigated during Yee's divorce action. As such, he is cloaked with absolute quasi-judicial immunity. As explained by the court in *Tidik v. Ritsema,* 938 F.Supp. 416 (E.D.Mich.1996):

> The doctrine of absolute judicial immunity is extended to persons whose duties are essentially adjudicative or prosecutorial in nature. *Watts v. Burkhart,* 978 F.2d 262, 274 (6th Cir.1992) (extending absolute immunity to medical board examiners) (citing rationale of *Briscoe v. LaHue,* 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983)).
>
> The immunity of participants in the judicial process stems from specific characteristics of the process itself. *Watts,* 978 F.2d at 273 (citing *Butz* [*v. Economou*], 438 U.S. 478, 512, 98 S.Ct. 2894, 57 L.Ed.2d 895 [(1978)]). For instance, "the controversies with which the process deals are often intense, and the loser, given an opportunity to do so will frequently charge the participants in the process with unconstitutional animus . . . " 978 F.2d at 273. Therefore, "absolute immunity is thus necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation." *Butz,* 438 U.S. 512.

Id. at 422-23.

The Sixth Circuit Court of Appeals expressly found that such quasi-judicial immunity applied to guardians ad litem in *Kurzawa v. Mueller,* 732 F.2d 1456 (6th Cir.1984) (applying Michigan law). The court explained:

> [An attorney] who function[s] as guardian ad litem for [a minor], must act in the best interests of the child he represents.

> Such a position clearly places him squarely within the judicial process to accomplish that goal. A guardian ad litem must also be able to function without the worry of possible later harassment and intimidation from dissatisfied parents. Consequently, a grant of absolute immunity would be appropriate. A failure to grant immunity would hamper the duties of a guardian ad litem in his role as advocate for the child in judicial proceedings.

732 F.2d at 1458.

Applying the foregoing authorities, the Court finds that Defendant Bowne is cloaked with absolute quasi-judicial immunity in this case.

Therefore, for the foregoing reasons, and those further reasons stated in the Court's previous Opinions and Orders, which are hereby incorporated by reference,

IT IS HEREBY ORDERED that Defendant Lynn D. Bowne's Motion to Dismiss is GRANTED. Accordingly,

IT IS FURTHER ORDERED that Plaintiff's claims against Defendant Bowne are DISMISSED, WITH PREJUDICE.

2007 WL 200952

United States District Court,
E.D. Michigan,
Southern Division.
William R. **YEE**, Plaintiffs,
v.
MICHIGAN SUPREME COURT, et al., Defendants.
No. 06-CV-15142-DT.
Jan. 23, 2007.

William Yee, Owosso, MI, pro se.

G. Y., pro se.

Dawn C.M. Jack, MI Dept. of Atty. Gen. (Public Employment), Lansing, MI, Allan C. Vander Laan, Cummings, McClorey, Grand Rapids, MI, Michael J. Gildner, Simen, Figura, H. William Reising, Plunkett & Cooney, Flint, MI, Dale R. Burmeister, Harvey Kruse, Eric S. Goldstein, J. Steven Johnston, Bigler, Berry, Troy, MI, William C. Brown, Brown and Stewart, Owosso, MI, for Defendants.

Michael J. Mangapora, Michael J. Mangapora, P.C., Flint, MI, pro se.

Lynn D. Bowne, Owosso, MI, pro se.

Arnold D. Dunchock, Corunna, MI, pro se.

Philip L. Dulmage, Flint, MI, pro se.

ORDER GRANTING DEFENDANT LOUIS J. BELZER'S FED. R. CIV. P. 12(b)(6) MOTION TO DISMISS

GERALD E. ROSEN, United States District Judge.

I. *INTRODUCTION*

On January 10, 2006, this Court entered an Opinion and Order dismissing the Judicial Defendants, Attorney General Defendants, County Prosecutor Defendants, Mediator Defendants, and Friend of the Court Defendants finding that all of these defendants are cloaked with absolute judicial and quasi-judicial immunity. This matter is now before the Court on the motions for dismissal filed by Defendant Louis J. Belzer.

Defendant Belzer is a member of the Shiawassee County Friend of the Court. As such, as this Court held in its January 10, 2006 Opinion and Order with respect to the other Friend of the Court Defendants named by Plaintiff Yee in his Complaint, Belzer is cloaked with quasi-judicial immunity.

For the foregoing reasons, as more fully explained in the Court's January 10, 2006 Memorandum Opinion and Order which is hereby incorporated by reference,

IT IS HEREBY ORDERED that Defendant Louis J. Belzer's Motion to Dismiss [Document No. 126] is GRANTED. Accordingly,

IT IS FURTHER ORDERED that Plaintiff's claims against Defendant Belzer are DISMISSED, WITH PREJUDICE.

MEMORANDUM OPINION AND ORDER GRANTING ATTORNEY DEFENDANTS MOTIONS TO DISMISS

I. *INTRODUCTION*

On January 10, 2006, this Court entered an Opinion and Order dismissing the Judicial Defendants, Attorney General Defendants, County Prosecutor Defendants, Mediator Defendants, and Friend of the Court Defendants finding that all of these defendants are cloaked with absolute judicial and quasi-judicial immunity. This matter is now before the Court on the motions for dismissal filed by the "Attorney Defendants," Michael J. Guss and his law firm, Harvey Kruse, P.C.; J. Steven Johnston and Eric S. Goldstein, and their law firm, Bigler, Berry, Johnston, Sztykiel & Hunt, P.C.; Edward B. Davison and his law firm, Gault Davison, P.C.; Thomas A. Connolly and Thomas A. Connolly, P.C.; Marcia Howe, Patrick A. Aseltyne and Jason D. Kolkema, and their law firm, Johnson, Rosati, LaBarge, Aseltyne & Field, P.C.; David Carbajal and Alan R. Sullivan. These various attorneys and law firms represented the owners of parcels of property on Bambi Lake in Shiawassee County, Michigan who were sued by Plaintiff in 1995 in Michigan state court for conspiring to operate the spillway located at the southwest end of the lake in a manner which Yee claimed was

calculated to maintain the lake at a level detrimental to his property. *See Yee v. Shiawassee County Board of Commissioners,* 251 Mich.App. 379, 651 N.W.2d 756 (2002), *lv. denied,* 468 Mich. 852 (2003) and *cert. denied,* 540 U.S. 1004, 124 S.Ct. 538, 157 L.Ed.2d 409 (2003). Plaintiff has filed responses to the various Defendants' motions.

Having reviewed and considered Plaintiff's Complaint, Defendants' Motions and Plaintiff's Responses thereto, the Court has determined that oral argument is not necessary. Therefore, pursuant to Eastern District of Michigan Local Rule 7.1(e)(2), this matter will be decided on the briefs. This Opinion and Order sets forth the Court's ruling.

II. *FACTUAL BACKGROUND*[1]

Plaintiff William Yee owns a home on Bambi Lake, in Shiawassee County, Michigan. In 1995, Yee

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[1] As Yee himself concedes in his Response Briefs, his claims against the Defendants in this action stem from state court litigation he was involved in – and which resulted in rulings that were adverse to Yee's position – concerning the water level of Bambi Lake. For background purposes, the facts stated herein are taken, in part, from the Michigan Court of Appeals' decisions concerning Yee's state court litigation, *Yee v. Shiawassee County Board of Commissioners, et al.,* 251 Mich.App. 379, 651 N.W.2d 756 (2002), *lv. denied,* 468 Mich. 852 (2003) and *cert. denied,* 540 U.S. 1004, 124 S.Ct. 538, 157 L.Ed.2d 409 (2003), and *In re Lake Level for Bambi Lake, Shiawassee County,* 2004 WL 2169037 (Mich.App.2004), *lv. denied,* 472 Mich. 939, 698 N.W.2d 392 (2005) and *cert. denied,* ___ U.S. ___, 126 S.Ct. 750, 163 L.Ed.2d 573 (2005).

brought suit against other owners of property surrounding the lake claiming that these other property owners had conspired to operate the spillway at the southwest end of the lake in a manner calculated to maintain Bambi Lake at an elevated level that was detrimental to his property.[2] Yee claimed that when the lake's water level was elevated to more than 799 feet (which Yee claims was the level of the lake that was maintained from the time that he purchased his property in 1986 until 1993), it encroached upon, and damaged, his property. Yee sought relief in the form of monetary damages and additionally requested that the trial court issue an injunction requiring the defendant property owners to reduce the lake's level to a crest elevation of 799 feet above sea level in accordance with the original 1970 dam permit given by Department of Natural Resources to allow the formation of the lake.

The matter was set for trial in January 1999.[3] However, prior to the commencement of trial, issues

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[2] Although Yee filed his complaint in Shiawassee County Circuit Court, after the judge assigned to the case recused himself from hearing the matter, the State Court Administrative Office assigned the case to Judge Judith Fullerton in the Genesee County Circuit Court.

[3] The trial court had bifurcated the lake level and damages issues, and the damages questions was submitted to mediation. All parties accepted the mediation evaluation which awarded plaintiff monetary damages for damage to his property. Thus, only the issue of whether the lake was being maintained at an inappropriate level such that Plaintiff might be entitled to the injunctive relief he requested was to be tried.

concerning the trial court's authority to establish a legal lake level were raised in a brief filed by the Michigan Department of Environmental Quality, which was allowed to intervene in the action. The MDEQ argued that the exclusive method for establishing a legal lake level is through the procedures outlined in the Natural Resources and Environmental Protection Act, which require that any action to establish a legal level for an inland lake be initiated by the county board of commissioners. Therefore, the Department argued that the trial court had no authority to act in the manner requested by Plaintiff Yee.

Several of the defendants adopted the arguments of the MDEQ in motions for summary disposition filed on January 19, 1999. On January 20, 1999, the parties assembled for trial on the lake level issue. Before trial, however, the trial court heard argument on the issues raised by the MDEQ in its trial brief. After hearing the arguments of all parties, the court determined that summary disposition of Plaintiff's claims was appropriate. Accordingly, an order granting summary disposition was entered in favor of all defendants and, on February 3, 1999, Yee's complaint was dismissed.

Several days after dismissal of Plaintiff's suit, the riparian property owners on Bambi Lake petitioned the Shiawassee County Board of Commissioners to establish a normal level for the lake pursuant to the NREPA. After the completion of an engineering study commissioned by the Board in order to determine the historic water surface elevation of the lake,

the Board directed the county attorney to commence an action in Shiawassee County Circuit Court to set the water surface elevation level of the lake at 800.67 feet. The county attorney initiated such action on June 13, 2000.

Meanwhile, on August 6, 1999, Yee filed a second action naming the Shiawassee County Board of Commissioners, the Shiawassee County Drain Commissioner, and George Braidwood, Jr., as defendants. In this action, Yee sought to enjoin the county commissioners from setting a legal water level for Bambi Lake, contending that the 1970 dam permit set the legal lake level at 799 feet above sea level. (He also sought a further award of damages as well as an injunction "to abate the flooding" of his property.) Then, three months later, on November 22, 1999, Yee filed yet a third action relating to the water level of Bambi Lake. Although filed as a "quiet title" action to determine interests in land, the relief sought by Yee was, in essence, the same as that sought in his two previous actions, i.e., an order declaring that the "lawful normal" elevation of Bambi Lake, as established by the 1970 dam permit, was 799 feet above sea level, and that no county agency had authority to alter that level.[4]

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[4] These cases were assigned to the same Shiawassee County Circuit Judge who was assigned Yee's first action. The judge again recused himself from both of these cases and they were, therefore, transferred to Genesee County Circuit Judge Fullerton who decided Yee's first case.

The defendants in the second and third actions moved for summary disposition under various theories, including res judicata stemming from the January 20, 1999 ruling in the first of Yee's actions. The court agreed with the defendants and dismissed Plaintiff's complaints. Plaintiff appealed the decisions rendered in all three cases.

The three cases were consolidated on appeal, and on May 21, 2002, the Michigan Court of Appeals entered its decision affirming all three rulings. *See Yee v. Shiawassee County Bd. of Commissioners,* 251 Mich.App. 379, 651 N.W.2d 756 (2002) (*"Yee I"*). Plaintiff subsequently applied for leave to appeal to the Michigan Supreme Court. Leave to appeal was denied on February 23, 2003. *See Yee v. Shiawassee County Bd. of Commissioners,* 468 Mich. 852 (2003). Yee then filed a petition for a writ of *certiorari* to the United States Supreme Court which was denied on November 10, 2003. *See Yee v. Shiawassee County Bd. of Comm'rs,* 540 U.S. 1004, 124 S.Ct. 538, 157 L.Ed.2d 409 (2003).

Meanwhile, in June 2002, the Shiawassee County Board of Commissioners' action to establish the normal level of Bambi Lake at 800.67 feet was commenced in Shiawassee County Circuit Court. Mr. Yee was permitted to intervene in the action. After a five-day bench, the trial court established the level of Bambi Lake consistent with the county board's petition. Yee also appealed this decision.

On September 24, 2004, the Michigan Court of Appeals affirmed the circuit court's decision. *See In re Lake Level for Bambi Lake,* 2004 WL 2169037 (Mich.App.2004) (unpublished decision; text available on WESTLAW). Yee then applied for leave to appeal to the Michigan Supreme Court. Leave to appeal was denied on June 28, 2005. *See In re Lake Level for Bambi Lake,* 472 Mich. 936 (2005). Yee subsequently petitioned for a writ of *certiorari* to the United States Supreme Court. The Supreme Court denied *certiorari* on January 23, 2006. *See Yee v. Shiawassee County, Michigan,* ___ U.S. ___, 126 S.Ct. 1188, 163 L.Ed.2d 1142 (2006).

On November 16, 2006, Plaintiff filed his 160-plus-page Complaint in the instant action. At the heart of Plaintiff's Complaint are his arguments that Judge Judith Fullerton, the Genesee County Circuit Judge on all three of the cases filed by Yee, wrongly decided that the 1970 dam permit did not establish a legal water level for Bambi Lake, wrongly decided that his monetary judgment was limited to his mediation award, made various procedural errors in deciding the matter via summary disposition, and that the Attorney General Defendants, County Prosecutor Defendants, the Mediator Defendants, and all of the other Attorney Defendants conspired with the Judge to make her rulings thereby depriving Yee of his due process, equal protection and property rights. As indicated, the Court has already dismissed Judge Fullerton, all of the other Judicial Defendants, the Attorney General Defendants, the County Prosecutor

Defendants and the Mediator Defendants on the basis of absolute judicial and quasi-judicial immunity. The Court's concern in this Opinion is the "Attorney Defendants." The discussion that follows, however, would also apply to the defendants who have already been dismissed on immunity grounds.

III. *DISCUSSION*

A. *PLAINTIFF'S CLAIMS ARE BARRED BY THE ROOKER-FELDMAN DOCTRINE*

It is axiomatic that federal courts lack appellate jurisdiction over state court judgments in connection with modifying them or vacating them. *Rooker v. Fidelity Trust Co.,* 263 U.S. 412, 44 S.Ct. 149 (1923); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The Supreme Court's decisions in these two cases, taken together, stand for the proposition that the inferior federal courts lack the authority to perform, in effect, what would be an appellate review of state court decisions. This rule has become known as the *Rooker-Feldman* doctrine.

In *Rooker,* the plaintiffs brought an action in a federal district court claiming that an Indiana state statute violated their federal constitutional rights, even though the issues which the plaintiffs raised had been decided by an Indiana Circuit Court and affirmed by the Indiana Supreme Court. In affirming the federal district court's dismissal of the action based on lack of jurisdiction, the United States

Supreme Court stated that the state courts had jurisdiction to determine the constitutional validity of the state's statutes and, until reversed or modified by a state court, the state judgment would be an effective and conclusive adjudication, even before an inferior federal court. 263 U.S. at 415. In particular, the Court held that the inferior federal courts lacked jurisdiction to entertain a proceeding to reverse or modify a state court judgment since it would be an exercise of appellate jurisdiction and the jurisdiction possessed by the federal district court is strictly original. *Id.* at 414-17.

In *Feldman,* the plaintiff submitted to the District of Columbia Court of Appeals a petition for admission to the bar of the District of Columbia after he had been refused the right to take the bar examination because he had not graduated from an approved law school, as required by the District of Columbia rules. After the District of Columbia Court of Appeals denied the plaintiff's petition, he brought an action in a federal district court alleging that he had a right to take the bar exam pursuant to the Fifth Amendment, and that, denying him this right, due to his law school's lack of accreditation, was a violation of the Fifth Amendment and the Sherman Act. In finding that the federal district court had no jurisdiction over this matter, the U.S. Supreme Court held that plaintiffs seeking review of state court decisions must first exhaust the appellate review available to them at the state court level after which

their only recourse is to appeal to the United States Supreme Court. *Feldman,* 460 U.S. at 486.

The Supreme Court synthesized this rule in *Exxon Mobil Corporation v. Saudi Basic Industries Corp.,* 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005), explaining that the *Rooker-Feldman* doctrine applies to

> cases brought by state court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

544 U.S. at 284, 125 S.Ct. at 1521.

Thus, where the source of a plaintiff's injury is a state court decision, *Rooker-Feldman* bars a federal district court from hearing the plaintiff's claims. *See McCormick v. Braverman,* 451 F.3d 382, 393 (6th Cir.2006); *see also Howard v. Whitbeck,* 2007 WL 29779 (6th Cir., Jan. 5, 2007) (unpublished decision; text available on WESTLAW). It is only where the plaintiff's complaint stands independent of the state court judgment that *Rooker-Feldman* will not apply. *McCormick, supra* 451 F.3d at 393-394. However, merely phrasing a complaint as seeking redress for an injury caused by the *defendants' actions* (as opposed to injury caused by a state court decision) is not enough; if the defendants' actions are the product of the state court judgment, then the plaintiff's challenge of those actions is in fact a challenge of the

judgment itself, and, therefore, is barred under *Rooker-Feldman. See id.,* 451 F.3d at 394. *See also Fieger v. Ferry,* 471 F.3d 637, 2006 WL 3775775 (6th Cir., Dec.26, 2006) (holding that Fieger's federal complaint was barred by the *Rooker-Feldman* doctrine to the extent that he sought a declaration that the Defendant Justices violated his constitutional rights when they refused to recuse themselves from his prior cases because such a declaration would require the federal court to review the Justices' past recusal decisions); *Hoblock v. Albany County Bd. of Elections,* 422 F.3d 77, 87-88 (2nd Cir.2005) (finding that the plaintiffs' challenge to a county board of election's refusal to tally certain absentee ballots was in fact a challenge of the state court judgment which found that the absentee ballots were invalid.)

As indicated above, Plaintiff alleges the Attorney Defendants, the Attorney General Defendants, the County Prosecutor Defendants, the Mediator Defendants, and the MDNR-MDEQ conspired with Genesee County Circuit Judge Judith Fullerton to rule against him and violate his due process, equal protection and property rights by deciding that the 1970 dam permit did not establish a legal water level for Bambi Lake, deciding that his monetary judgment was limited to his mediation award, and by making various procedural errors in deciding the matter via summary disposition. *See* Plaintiff's First Amended Complaint, Count 8, ¶¶ 133-223. Therefore, to find for the Plaintiff necessarily would require this Court to review Judge Fullerton's various decisions and find that she

wrongly decided that the 1970 dam permit did not establish a legal water level for Bambi Lake, that she erred in deciding that his monetary judgment was limited to his mediation award, and that she further committed reversable error in deciding these matters via summary disposition. As *Rooker* and *Feldman* and their progeny make clear, this Court is without jurisdiction to do so.

B. *PLAINTIFF IS COLLATERALLY ESTOPPED FROM RAISING THE CLAIMS HE ALLEGES AGAINST THE ATTORNEY DEFENDANTS*

To the extent that Plaintiff's claims against the Attorney Defendants are not barred by *Rooker-Feldman,* Plaintiff is collaterally estopped from raising these claims.

The Full Faith and Credit Act, 28 U.S.C. § 1738, requires federal courts to give state court judgments the same preclusive effect that the state would afford such judgments. *Exxon Mobil, supra,* 125 S.Ct. at 1527 (quoting *Parsons Steel, Inc. v. First Alabama Bank,* 474 U.S. 518, 523, 106 S.Ct. 768, 88 L.Ed.2d 877 (1986)); *see also Peterson Novelties v. City of Berkeley,* 305 F.3d 386, 394 (6th Cir.2002). In Michigan, collateral estoppel precludes relitigation of issues or facts that have already been decided in a prior litigation. *Wilcox v. Sealy,* 132 Mich.App. 38, 46, 346 N.W.2d 889 (1984)."Where issues of fact or law have been finally determined by a court of competent jurisdiction in one legal action which are essential to

the maintenance of another legal action, it is universally held that the second action must fail." *Jones v. Chambers,* 353 Mich. 674, 680, 91 N.W.2d 889 (1958).

The goal of collateral estoppel is to balance the right and interests of a party to be heard and the public's interest in discouraging repetitive litigation. *See People v. Gates,* 434 Mich. 146, 154, 452 N.W.2d 627 (1990); *Howell v. Vito's Trucking Co.,* 386 Mich. 37, 48, 191 N.W.2d 313 (1971). As the Michigan Court of Appeals explained in *Minicuri v. Scientific Data Mgmt., Inc.,* 243 Mich.App. 28, 620 N.W.2d 657 (2000), collateral estoppel and the related preclusion doctrine of *res judicata* "serve an important function [by] conserv[ing] judicial resources" and giving finality to disputes:

> The preclusion doctrines serve an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims. By putting an end to litigation, the preclusion doctrines eliminate costly repetition, conserve judicial resources, and ease fears of prolonged litigation.

243 Mich.App. at 33, 620 N.W.2d 657.

Michigan has three requirements for collateral estoppel or "issue preclusion":

> (1) a question of fact essential to the judgment [in the second action] must have been actually litigated and determined by a

> valid and final judgment [in the first action]; (2) the same parties must have had a full [and fair] opportunity to litigate the issue; and (3) there must be mutuality of estoppel.

McCormick v. Braverman, supra, 451 F.3d at 397 (quoting *Monat v. State Farm Ins. Co.,* 469 Mich. 679, 677 N.W.2d 843, 845-46 (2004)) (citation omitted.) With respect to the third requirement, mutuality is not required for defensive use of collateral estoppel against a prior plaintiff. *McCormick, supra; Monat, supra,* 677 N.W.2d at 850-51.

Here, Plaintiff challenges the propriety and validity of various state court decisions and orders. But the issue of whether the decisions were correct and the orders valid and proper has already been fully litigated in the Michigan state courts. Plaintiff has exhausted his appeal rights in the Michigan courts and was twice denied a writ of certiorari by the United States Supreme Court. Plaintiff's claims have been heard and decided on their merits. Accordingly, Plaintiff is collaterally estopped from attacking the state court rulings here in federal court.[5]

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[5] Collateral estoppel also bars Plaintiff's claims regarding his divorce, including the state court's rulings regarding parenting time, child custody, spousal support and property rights.

C. *PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS*

Even if Plaintiff is not precluded from pursuing his claims by the *Rooker-Feldman* doctrine or the collateral estoppel doctrine, his claims against the Attorney Defendants are time-barred.

As previously indicated, Plaintiff's claim is that the Attorney Defendants conspired with the Attorney General Defendants, the County Prosecutor Defendants, the Mediator Defendants, and Genesee County Circuit Judge Judith Fullerton to cause him to suffer damages to his property, to deprive him of his civil rights and to intentionally cause him emotional distress. As theories of recovery, Plaintiff asserts claims under 28 U.S.C. § 1983 and the Michigan Elliott-Larsen Civil Rights Act; state common law claims of conspiracy and intentional infliction of emotional distress; and civil RICO claims. Construing Plaintiff's First Amended Complaint as broadly as possible, inasmuch as Plaintiff claims that the Attorney Defendants conspired with Judge Fullerton causing her to reach the various decisions she did, Plaintiff's claims against the Attorney Defendants would have accrued at the very latest by the time that Judge Fullerton decided the last of the Genesee County Circuit Court actions on April 13, 2000.[6]

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[6] Judge Fullerton was not involved in the case filed by the Shiawassee County Board of Commissioners in June 2000 to set a legal water level for Bambi Lake. That case was assigned to,

(Continued on following page)

The appropriate statute of limitations to be borrowed for § 1983 actions arising in Michigan is the state's three-year limitations period for personal injury claims. M.C.L. § 600.5805(10). *See Wolfe v. Perry,* 412 F.3d 707, 714 (6th Cir.2005); *Chippewa Trading Co. v. Cox,* 365 F.3d 538, 543 (6th Cir.), *cert. denied,* 543 U.S. 988, 125 S.Ct. 500, 160 L.Ed.2d 372 (2004). That same three-year statute of limitations applies to claims of intentional infliction of emotional distress, *see Nelson v. Ho,* 222 Mich.App. 74, 564 N.W.2d 482, 487 (1997); Elliott-Larsen Civil Rights Act claims, *see Timko v. Oakwood Custom Coating, Inc.,* 244 Mich.App. 234, 625 N.W.2d 101, 104 (2001); and civil conspiracy claims, *see Mayes v. Three Rivers Rubber Corp.,* 135 Mich.App. 42, 352 N.W.2d 339 (1984). A civil RICO action has a four-year limitation period. *Rotella v. Wood,* 528 U.S. 549, 120 S.Ct. 1075, 145 L.Ed.2d 1047 (2000); *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.,* 483 U.S. 143, 156, 107 S.Ct. 2759, 97 L.Ed.2d 121 (1987). Under all of these theories, the limitations period accrues when a plaintiff knew or should have known of an injury. *See e.g., Rotella,* 528 U.S. at 554-55, 120 S.Ct. 1075, 145 L.Ed.2d 1047.

To the extent that Yee is attempting to make out a claim based on the "conspiracy" of the Attorney Defendants and Judge Fullerton, Yee knew or should

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and tried before, Shiawassee County Circuit Judge Randy L. Tahvonen.

have known of his injury as of April 13, 2000 when the last of the cases was decided in the Genesee County Circuit Court.[7] Therefore, under the foregoing authorities, the period of limitations for Plaintiffs Section 1983, Elliott-Larsen, intentional infliction of emotional distress and civil conspiracy claims would have expired as of April 13, 2003 and for his civil RICO claims in April 13, 2004. Plaintiff, however, did not file the instant action until November 16, 2006, i.e., more than two years after the longest period of limitations had expired. Plaintiff's Complaint against the Attorney Defendants, therefore, is time-barred.

CONCLUSION

For all of the foregoing reasons,

IT IS HEREBY ORDERED that the Attorney Defendants' Motions to Dismiss [Document Nos. 44,

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[7] Yee does not – and surely cannot realistically – claim that the Attorney Defendants' continued with their conspiracy with Judge Fullerton while the case proceeded on appeal when Judge Fullerton no longer had any involvement with the case. Therefore, the fact that the appeals progressed after June 2000 does not toll the accrual of Yee's claims of deprivation of constitutional rights, discrimination, intentional infliction of emotional distress, civil conspiracy and RICO violations against the Attorney Defendants. The claims against these defendants accrued no later than when the cases were decided by Judge Fullerton.

46, 54, 59, 81, 97 and 144] are GRANTED.[8] Accordingly,

IT IS FURTHER ORDERED that Plaintiff's claims against Attorney Defendants Michael J. Guss and his law firm, Harvey Kruse, P.C.; J. Steven Johnston and Eric S. Goldstein, and their law firm, Bigler, Berry, Johnston, Sztykiel & Hunt, P.C.; Edward B. Davison and his law firm, Gault Davison, P.C.; Thomas A. Connolly and Thomas A. Connolly, P.C.; Marcia Howe, Patrick A. Aseltyne and Jason D. Kolkema, and their law firm, Johnson, Rosati, LaBarge, Aseltyne & Field, P.C.; David Carbajal and

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[8] With respect to the Motion filed by Michael J. Guss and his law firm, Harvey Kruse, P.C. [Document No. 44], although the Court agrees that Plaintiff's claims against these attorney defendants should be dismissed for the reasons stated in this Opinion, the Court rejects the motion made by these two Defendants insofar as they argue that, because they were at all times acting as counsel for their client (who was a defendant in Yee's state court action), they are cloaked with absolute immunity. The rule of absolute immunity for attorneys applies only to defamation actions. *See Hartung v. Shaw*, 130 Mich. 177, 89 N.W. 701 (1902); *Sanders v. Leeson Air Conditioning Corp.*, 362 Mich. 692, 108 N.W.2d 761 (1961); *Various Markets v. Chase Manhattan Bank, N.A.*, 908 F.Supp. 459, 465 (E.D.Mich.1995); *see also Kaefle v. Lerner, Sampson & Rothfuss, L.P.A.*, 161 Fed. Appx. 487, 491 (6th Cir.2005) ("Although it is true, as the district court noted, that each of the plaintiffs' claims against the attorney defendants arises out of actions taken pursuant to their representative capacity, the rule of absolute immunity applies only to defamation suits.") The rule does not apply to any other kinds of claims.

Alan R. Sullivan are DISMISSED, WITH PREJUDICE.

2007 WL 118931

United States District Court,
E.D. Michigan,
Southern Division.
William R. YEE, Plaintiffs,
v.
MICHIGAN SUPREME COURT, et al., Defendants.
No. 06-CV-15142-DT.
Jan. 10, 2007.

William Yee, Owosso, MI, pro se.

Dawn C.M. Jack, M.I. Dept. of Attorney General, Patrick A. Aseltyne, Johnson, Rosati, Lansing, MI, Michael J. Gildner, Simen, Figura, H. William Reising, Plunkett & Cooney, Michael J. Mangapora, Michael J. Mangapora, P.C., Edward B. Davison, Gault Davison, Philip L. Dulmage, Flint, MI, Eric S. Goldstein, J. Steven Johnston, Bigler, Berry, Dale R. Burmeister, Harvey Kruse, Troy, MI, Michael J. Sullivan, Theresa M. Asoklis, Collins, Einhorn, Southfield, MI, Gregory W. Mair, O'Neill, Wallace, Saginaw, MI, Lynn D. Bowne, William C. Brown, Brown and Stewart, Owosso, MI, Arnold D. Dunchock, Corunna, MI, for Defendants.

MEMORANDUM OPINION AND ORDER *GRANTING MOTIONS TO DISMISS*

GERALD E. ROSEN, United States District Judge.

I *INTRODUCTION*

Plaintiff William Yee, acting *pro se,*[1] initiated this action on November 16, 2006 by filing a Complaint and Jury Demand and a subsequent First Amended Complaint on December 4, 2006.[2] Yee's 160-plus page complaint includes 16 counts and names 71 defendants. Included among the defendants are the Michigan Supreme Court and all of the Justices of the Michigan Supreme Court; the Michigan Court of Appeals and the judges of the Michigan Court of Appeals; a number of Michigan Circuit and District Courts and judges of those courts; the State Court Administrator's Office (the "Judicial Defendants"); the Michigan Attorney General's Office, former Michigan Attorneys General and Assistant Attorneys General (the "Attorney General Defendants"); a number of county prosecutors and assistant prosecutors (the "County Prosecutor Defendants"); several state mediators (the "Mediator Defendants"); the Shiawassee Friend of the Court and employees of the Shiawassee County Friend of the Court (the "Friend of the Court Defendants"); a number of attorneys and law firms who represented Plaintiff's opponents in

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[1] Although he is acting *pro se,* the Court notes that Mr. Yee is a member of the State Bar of Michigan and lists a "P number" along side his name in all of his pleadings in this matter.

[2] Plaintiff's First Amended Complaint is in substance identical to his original Complaint. The only marked difference is the listing of all of the defendants in the caption of the First Amended Complaint.

several previous Michigan state court actions (the "Attorney Defendants"); and Plaintiff's ex-wife.

Yee's entire Complaint stems from state court litigation he was involved in – and which resulted in rulings that were adverse to Yee's position – concerning the water level of Bambi Lake a/k/a Cummings Lake in Shiawassee County, Michigan from 1995 through 2005, *see Yee v. Braidwood,* 2001 WL 665176 (Mich.App.2001), *lv. denied,* 465 Mich. 938, 638 N.W.2d 758 (2001); *Yee v. Shiawassee County Board of Commissioners, et al.,* 251 Mich.App. 379, 651 N.W.2d 756 (2002), *lv. denied,* 468 Mich. 852 (2003) and *cert. denied,* 540 U.S. 1004, 124 S.Ct. 538, 157 L.Ed.2d 409 (Nov. 10, 2003); *In re Lake Level for Bambi Lake, Shiawassee County,* 2004 WL 2169037 (Mich.App.2004), *lv. denied,* 472 Mich. 939, 698 N.W.2d 392 (2005) and *cert. denied,* ___ U.S. ___, 126 S.Ct. 750, 163 L.Ed.2d 573 (2005), and adverse outcomes in actions involving disputes between Yee and his former spouse concerning their divorce, parenting time, child custody, spousal support and property rights. *See e.g., Yee v. Roche et al.,* 2002 WL 1308338 (Mich.App.2002). Yee contends that the various named-defendants conspired against him to deprive him of property and money and to violate his civil rights in the course of the lake level and divorce litigation.

In lieu of filing answers to Yee's Complaint, a number of the defendants have filed motions to dismiss. Yee has filed responses to these various motions. Having reviewed and considered Plaintiff's

Complaint, the Defendants' Motions and Plaintiff's Responses thereto, the Court has determined that oral argument is not necessary. Therefore, pursuant to Eastern District of Michigan Local Rule 7.1(e)(2), this matter will be decided on the briefs. This Opinion and Order addresses the motions to dismiss filed by the various Judicial Defendants, Attorney General Defendants, the Mediator Defendants, the Friend of the Court Defendants, and the County Prosecutor Defendants.[3]

II. *DISCUSSION*

A. STANDARDS APPLICABLE TO MOTIONS TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)

Fed.R.Civ.P. 12(b)(6) allows the court to determine the legal sufficiency of a plaintiff's claims. *See Mayer v. Mylod,* 988 F.2d 635, 638 (6th Cir.1993). Courts considering a Rule 12(b)(6) motion must accept the well-pled factual allegations of the complaint as true and construe all reasonable inferences in favor of the plaintiff. *See Miller v. Currie,* 50 F.3d 373, 377 (6th Cir.1995). However, the court is not required to accept conclusions of law or unwarranted inferences of fact cast in the form of factual allegations. *Blackburn v. Fisk University,* 443 F.2d 121, 123 (6th Cir.1971). Accordingly, a court must determine

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[3] The motions of the other "Attorney Defendants" will be addressed in a separate Opinion and Order.

"whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief" under a viable legal theory advanced in the complaint. *Columbia Natural Resources, Inc. v. Tatum,* 58 F.3d 1101, 1109 (6th Cir.1995), *cert. denied,* 516 U.S. 1158, 116 S.Ct. 1041, 134 L.Ed.2d 189 (1996).

B. *THE JUDICIAL DEFENDANTS ARE CLOAKED WITH ABSOLUTE IMMUNITY*

It is well-established that judges, when acting within the scope of their authority and subject matter jurisdiction, are cloaked with absolute immunity under both federal and state law. *Mireles v. Waco,* 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991); *Ireland v. Tunis,* 113 F.3d 1435, 1440-43 (6th Cir.1997); *Barrett v. Harrington,* 130 F.3d 246 (6th Cir.1997), *cert. denied,* 523 U.S. 1075, 118 S.Ct. 1517, 140 L.Ed.2d 670 (1998); *Ross v. Consumers Power Co.,* 420 Mich. 567, 632, 363 N.W.2d 641, 667 (1985) (Absolute immunity is granted to judges, even for malicious acts, as long as they are acting within their judicial authority). *Cf.,* M.C.L. § 691.1407(5) ("Judges . . . are immune from tort liability for injuries to persons or damages to property whenever they are acting within the scope of their judicial . . . authority.") A judicial act "does not become less judicial by virtue of an allegation of malice or corruption of motive." *Forrester v. White,* 484 U.S. 219, 227, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988). The protection of absolute judicial immunity attaches so long as the challenged action "is a function normally performed

by a judge" and occurred while the judge was acting "in his or her judicial capacity." *Ireland v. Tunis, supra,* 113 F.3d at 1440-41 (quoting *Mireles v. Waco, supra,* 502 U.S. at 13, and *Stump v. Sparkman,* 435 U.S. 349, 362, 98 S.Ct. 1099, 1107-08, 55 L.Ed.2d 331 (1978).

In this case, Plaintiff, himself has made it clear that all of his complaints against the various Judicial Defendants arise out of the various judges' actions taken in ruling against him with respect to his disputes with the MDNR/MDEQ and Shiawassee County officials and riparian property owners concerning the water level of Bambi Lake and his divorce and custody battles with his ex-wife. It is without dispute that the judges took the challenged actions while acting "in their judicial capacity." Thus, under well-settled law, the Judicial Defendants are entitled to absolute immunity for the actions complained of by Plaintiff. Therefore, Plaintiff has failed to state a claim against these various Judicial Defendants upon which relief may be granted.

Accordingly, Plaintiff's claims against the Honorable Maura D. Corrigan, the Honorable Robert P. Young, Jr., the Honorable Stephen J. Markman, the Honorable Marilyn J. Kelly, the Honorable Michael F. Cavanaugh, the Honorable Elizabeth A. Weaver, the Honorable Clifford W. Taylor, the Honorable James R. Clatterbaugh, the Honorable Donald E. Holbrook, Jr., the Honorable Richard Allen Griffin, the Honorable Donald S. Owens, the Honorable Gerald D. Lostracco, the Honorable Judith Fullerton, the Honorable

Michael R. Smolenski, the Honorable Henry W. Saad, the Honorable Richard A. Bandstra, the Honorable Kirsten Frank Kelly, the Honorable Mark J. Cavanaugh, the Honorable John T. Connolly, the Honorable Stephen L. Borrello, the Honorable Randy L. Tahvonen, Magistrate J. Kevin McKay, the Michigan Supreme Court, the Michigan Court of Appeals, the 35th Circuit Court, the 7th Circuit Court, the 29th Circuit Court, the 71A District Court, and the State Court Administrative Office will be dismissed with prejudice.

C. THE ATTORNEY GENERAL DEFENDANTS AND THE COUNTY PROSECUTOR DEFENDANTS ARE ALSO PROTECTED BY *ABSOLUTE IMMUNITY*

It is equally well-established that prosecutors are absolutely immune when performing the traditional functions of an advocate. *See Kalina v. Fletcher,* 522 U.S. 118, 130, 118 S.Ct. 502, 139 L.Ed.2d 471 (1997); *Surlock v. Thompson,* 330 F.3d 791, 797 (6th cir.2003); *Grant v. Hollenbach,* 870 F.2d 1135, 1137 (6th Cir.1989). Thus, the Supreme Court has held that a prosecutor is absolutely immune for the initiation and pursuit of a criminal prosecution. *Imbler v. Pachman,* 424 U.S. 409, 431, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976); *Lomaz v. Hennosy,* 151 F.3d 493, 497 (6th Cir.1998). Likewise, a prosecutor is absolutely immune from civil suit based on a decision not to prosecute or to terminate a prosecution. *Dohaish v. Tooley,* 670 F.2d 934 (10th Cir.1982); *Curry v. Jensen,* 523

F.2d 387 (9th Cir.1975), *cert. denied,* 423 U.S. 998, 96 S.Ct. 428, 46 L.Ed.2d 373 (1975); *Turack v. Guido,* 464 F.2d 535 (3rd Cir.1972). "Absolute prosecutorial immunity is not defeated by showing that a prosecutor acted wrongfully or even maliciously [because] the decision to prosecute ... 'even if malicious and founded in bad faith, is unquestionably advocatory and at the heart of the holding in *Imbler*.'" *Grant v. Hollenbach, supra,* 870 F.2d at 1138.

The conduct of the County Prosecutor Defendants that Plaintiff complains of unquestionably relates to the traditional functions of an advocate. Specifically, Plaintiff Yee complains that the Shiawassee County prosecutors and assistant prosecutors violated RICO by requiring him to appear at an arraignment for a loud music citation issued in 1993, for not prosecuting the operators of the Bambi Lake dam for violating the Dam Safety Act of 1989, for issuing a warrant for his arrest on a stalking complaint for an incident that occurred in 1996, for not prosecuting his ex-wife for abusing their children, for failing to prosecute his ex-wife and her boyfriend for various criminal offenses. These acts clearly are advocatory functions.

The same is true of the Attorney General Defendants. Yee's claims against these defendants stem from the Attorney General's Office intervening as a plaintiff in a lawsuit involving him – the Bambi Lake level dispute – and taking a position adverse to him in the lower court and on appeal. The authority of the Attorney General to intervene in an action is

conferred by statute. *See* M.C.L. § 14.101, which provides:

> The Attorney General of the State is hereby authorized and empowered to intervene in any action heretofore or hereafter commenced in any court of the State whenever such intervention is necessary to protect any right or interest of the State, or of the people of the State. Such right of intervention shall exist at any stage of the proceeding, and the Attorney General shall have the same right to prosecute an appeal, or to apply for a rehearing or to take any other action or step whatsoever that it had or possessed by any of the parties to such litigation.
>
> The spirit of this power is power is [sic] clearly advocatory and quasi-judicial.

Thus, the County Prosecutor Defendants and the Attorney General Defendants are entitled to absolute immunity for the complained of actions. Therefore, the Court finds that Plaintiff has failed to state a claim against the Michigan Attorney General's Office; former Attorneys General Jennifer M. Granholm and Frank J. Kelley; Michigan Solicitor General Thomas L. Casey; Assistant Attorneys General James T. Farrell, Kenneth M. Ross and S. Peter Manning; and Shiawassee County Prosecutor Defendants Randy O. Colbry and Craig Wininger. The claims alleged against these Defendants, accordingly, will be dismissed.

C. THE MEDIATOR DEFENDANTS AND THE FRIEND OF THE COURT *DEFENDANTS ARE CLOAKED WITH QUASI-JUDICIAL IMMUNITY*

Absolute immunity also extends to non-judicial officers who perform "quasi-judicial duties when (1) the functions of the official in question are comparable to those of a judge; (2) the nature of the controversy is intense enough that future harassment or intimidation by litigants is a realistic prospect; and (3) adequate safeguards exist to justify dispensing with private damage suites [sic] to control unconstitutional conduct. *Butz v. Economou,* 438 U.S. 478, 512, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978); *Purich v. Tennessee Tech. Univ.,* 76 F.3d 414, 421 (6th Cir.1996); *see also Busch v. Rauch,* 38 F.3d 842 (6th Cir.1994). Thus, a hearing officer who performs tasks that are an integral part of the judicial process is entitled to absolute "quasi-judicial" immunity from suits for damages. *See Johnson v. Turner,* 125 F.3d 324, 333 (6th Cir.1997); *Foster v. Walsh,* 864 F.2d 416, 417-18 (6th Cir.1988). Included among this class of individuals to whom quasi-judicial immunity has been extended are mediators and arbitrators. *Butz, supra; see also Sanders v. Lesson Air Conditioning Corp.,* 362 Mich. 692, 695, 108 N.W.2d 761 (1961); *Boracks v. American Arbitration Assn.,* 205 Mich.App. 149, 517 N.W.2d 771 (1994).

The foregoing authorities clearly establish that Plaintiff has failed to state a claim against Mediator/ Case Evaluators William Reising and his law firm,

Plunkett & Cooney, P.C., and Michael J. Mangapora and his firm, Michael J. Mangapora, P.C. Plaintiff's complaint against these defendants arise out of a mediation evaluation crafted by Reising, Mangapora, and the Honorable John Connolly in the matter of *William R. Yee v. B. Ward Smith, et al.*, E.D. Mich. No. 84-CV-2386-DT. Clearly, the mediators were performing functions integral to the judicial process in fashioning a mediation award. Therefore, the claims against the Mediator Defendants will be dismissed.

Likewise, friend of the court employees acting in their official capacities are entitled to absolute immunity. *See Johnson v. Granholm,* 662 F.2d 449 (6th Cir.1981); *Tidik v. Ritsema,* 938 F.Supp. 416, 422-23 (E.D.Mich.1996).

In *Tidik,* as in this case, the plaintiff filed a Section 1983 action against numerous defendants, including several employees of the Wayne County Friend of the Court. Tidik alleged that the defendants were involved "in a complex conspiracy" to violate his constitutional rights during a divorce action pending in Wayne County Circuit Court. In granting the defendants' motion to dismiss, the court stated:

The doctrine of absolute judicial immunity is extended to persons whose duties are essentially adjudicative or prosecutorial in nature. *Watts v. Burkhart,* 978 F.2d 262, 274 (6th Cir.1992) (extending absolute immunity to medical board examiners)

(citing rationale of *Briscoe v. LaHue,* 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983).

The immunity of participants in the judicial process stems from specific characteristics of the process itself. *Watts,* 978 F.2d at 273 (citing *Butz,* 438 U.S. 478, 512, 98 S.Ct. 2894, 57 L.Ed.2d 895). For instance, "the controversies with which the process deals are often intense, and the loser, given an opportunity to do so will frequently charge the participants in the process with unconstitutional animus . . . " 978 F.2d at 273. Therefore, "absolute immunity is thus necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation." *Butz,* 438 U.S. 512. Under these standards, Defendants Lynn Watson, Court Clerk of the Third Circuit Court; John LeMire, Referee for Friend of the Court; and David March, Staff Attorney for Friend of the Court, are immune from suit. Their duties clearly qualify as adjudicative or prosecutorial.

Likewise, it is settled that social workers and their supervisors who work in conjunction with the courts regarding child neglect and delinquency proceedings are absolutely immune from suit. *Kurzawa v. Mueller,* 732 F,2d 1456, 1458 (6th Cir.1984) (extending absolute immunity to three Michigan Department of Social Services employees, a psychiatrist, psychologist and an attorney. This level of immunity allows the tasks necessary to protect children be done "without the worry of intimidation and harassment from dissatisfied parents," *Salyer v. Patrick,* 874 F.2d

374, 378 (6th Cir.1989) (citing *Kurzawa, Id.*) Accordingly Defendant social worker David Manville is entitled to perform his duties without harassment or the threat of vexatious litigation. The same is true for Gerhard Ritsema, Director of Wayne County Friend of the Court and chief overseer of a department responsible for the well-being of children.

938 F.Supp. at 422-23.

Yee's claims against the Shiawassee County Friend of the Court, Daniel J. Loomis, the Deputy Friend of the Court, and Christine Gazella, an FOC employee, stem from the Friend of the Court's 1998 recommendation that primary physical custody of the Yee children remain with Yee's ex-wife, Christine Roche, and Yee's disagreement with that recommendation. By application of the foregoing authorities, as with the judicial, prosecutorial and mediator defendants, these Friend of the Court Defendants are entitled to absolute immunity. Therefore, Plaintiff's claims against them will be dismissed.

CONCLUSION

For all of the foregoing reasons, the Court finds that Plaintiff has failed to state a claim upon which relief can be granted against the Judicial Defendants, the Attorney General Defendants, the County

Prosecutor Defendants, the Mediator Defendants or the Friend of the Court Defendants.[4] Therefore,

IT IS HEREBY ORDERED that the Motions to Dismiss filed by the Judicial Defendants, the Attorney General Defendants, the County Prosecutor Defendants, the Mediator Defendants and the Friend of the Court Defendants [Document Nos.28, 33, 35, 87 and 112] be, and hereby are, GRANTED. Accordingly,

IT IS FURTHER ORDERED that Plaintiff's claims against Honorable Maura D. Corrigan, the Honorable Robert P. Young, Jr., the Honorable Stephen J. Markman, the Honorable Marilyn J. Kelly, the Honorable Michael F. Cavanaugh, the Honorable Elizabeth A. Weaver, the Honorable Clifford W. Taylor, the Honorable James R. Clatterbaugh, the Honorable Donald E. Holbrook, Jr., the Honorable Richard Allen Griffin, the Honorable Donald S. Owens, the Honorable Gerald D. Lostracco, the Honorable Judith Fullerton, the Honorable Michael R. Smolenski, the Honorable Henry W. Saad, the Honorable Richard A. Bandstra, the Honorable Kirsten Frank Kelly, the Honorable Mark J. Cavanaugh, the Honorable John T. Connolly, the Honorable Stephen L. Borrello, the Honorable Randy L.

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[4] In addition to finding that these defendants are cloaked with absolute judicial and quasi-judicial immunity, the Court also notes that there are a number of other grounds that would warrant dismissal of Plaintiff's claims including the statute of limitations bar, and application of the *Rooker-Feldman*, collateral estoppel, and/or *res judicata* doctrines.

Tahvonen, Magistrate J. Kevin McKay, the Michigan Supreme Court, the Michigan Court of Appeals, the 35th Circuit Court, the 7th Circuit Court, the 29th Circuit Court, the 71A District Court, the State Court Administrative Office, the Michigan Attorney General's Office, Jennifer M. Granholm, Frank J. Kelley, Thomas L. Casey, James T. Farrell, Kenneth M. Ross, S. Peter Manning, Randy O. Colbry, Craig Wininger, William Reising, Plunkett & Cooney, P.C., Michael J. Mangapora, Michael J. Mangapora, P.C., the Shiawassee County Friend of the Court, Daniel J. Loomis, and Christine Gazella are DISMISSED, WITH PREJUDICE.

Case No. 07-1667

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

WILLIAM YEE,

Plaintiff-Appellant

and

G.Y. Minor Daughter of Plaintiff Williams R. Yee,

Plaintiff

v.

STATE COURT ADMINISTRATIVE OFFICE et al;

Defendants-Appellees

BEFORE: KENNEDY, MARTIN and COLE, Circuit Judges.

Upon consideration of the appellees' motions for costs/sanctions,

And further considering the appellant's opposition and motion for rehearing,

It is **ORDERED** that the motions for costs/sanctions are hereby **DENIED**.

It is further **ORDERED** that the motion for rehearing be and it hereby is **DENIED**.

ENTERED BY ORDER
OF THE COURT
Leonard Green, Clerk

Issued: February 26, 2008 /s/ Leonard Green

File No. 07-1667
United States Court of Appeals for the Sixth Circuit

WILLIAM YEE,
Plaintiff-Appellant

G.Y., Minor Daughter of Plaintiff William R. Yee,
Plaintiff,

v.

STATE COURT ADMINISTRATIVE OFFICE; RANDY O. COLBRY, Prosecuting Attorney; J. KEVIN MCKAY, Magistrate/Court Administrator; H. WILLIAM REISING; MICHAEL J. MANGAPORA; EDWARD B. DAVISON; J. STEVEN JOHNSTON; MICHAEL J. GUSS; ALAN R. SULLIVAN; SMITH, MARTIN, POWERS, AND KNIER, P.C.; PATRICK A. ASELTYNE; DAVID CARBAJAL; LYNN D. BOWNE; THOMAS A. CONNOLLY; ARNOLD D. DUNCHOCK; JAMES D. CPA, JR.; PHILIP L. DULMAGE et al
Defendant-Appellees

A civil action in the United States District Court, Eastern District of Michigan under an 18 USC § 1964(c) umbrella a claim with predicate federal claims including 42 USC § 1983, 42 USC § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc, with jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367.

FRAP 40. Petition for Panel Rehearing

William Yee P35984, Plaintiff-Appellant, In Pro Per
xxxxx, xxxxx, xx xxxxx-xxxx
xxx xxx-xxxx

Appellant William R. Yee has no Corporate Affiliations in these matters

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I: Jurisdictional Statement

1. This petition for rehearing of the panel order of January 24, 2008 is filed on or before February 7, 2008, giving rise to FRAP 40(a)(1) jurisdiction.

II: Statement of Issues

2. Does the record below support the panel's decision of January 24, 2008 that the *Rooker-Feldman* doctrine deprives it of subject matter jurisdiction?

Appellant says no and Appellees will say yes.

III: Statement of the Case: Facts

3. The panel did not correctly and completely state the facts of the case. Judge Fullerton rendered a judgment without jurisdiction and then dismissed the case, amended complaint paragraph 186 (R.2, page 47-48)

4. Judge Tahvonen ordered an illegal tax district, amended complaint at paragraph 6, (R.2, page 4-5) and amended complaint at paragraph 209, (R.2-2, page 55).

5. Judge Lostracco – P16808, the 35th Circuit Court, the Shiawassee County Prosecutors Office, Randy O. Colbry – P33053, Craig Wininger (P57058), The Shiawassee County Friend of the Court, Lois J. Belzer – P27251, Daniel J. Loomis – P16792, Christine K Gazella, J. Kevin McKay – P44647, Mr. Dulmage and Mr. Dunchock, did engage in a course of conduct in support of a criminal enterprise and conspiracy shared by all of the named defendants with the intent of violating 18 USC § 1962, amended complaint, paragraph 280, (R.2-2, page 23-24).

6. Christine Roche' and Philip Dulmage did engage in a conspiracy to violate 18 USC § 1962 by means of predicate crimes that included extortion, theft of property, violation of the Elliot-Larson Civil Rights Act, MCL 37.2101 *et seq*; violation of 42 USC § 1983, conspiracy in violation of 42 USC § 1985; assault and battery in violation of 18 USC § 245(b)(2)(F); conspiracy to violate equal protection of the laws in violation of Const. 1963, Art I, § 2, Eff.

Jan. 1, 1964; conspiracy to illegal search and seizure in violation of the doctor patient privilege of privacy and the attorney client right to privacy in violation of Const. 1963, Art I, § 11, Eff. Jan. 1, 1964; home invasion in violation of MCL 750.110(2); violation of Habeus Corpus and Const. 1963, Art I, § 12, Eff. Jan. 1, 1964; violation of the right to represent one's self as contemplated by Const. 1963, Art I, § 13, Eff. Jan. 1, 1964; denial of a jury trial as contemplated by Const. 1963, Art I, § 14, Eff. Jan. 1, 1964; cruel and unusual punishment as contemplated by Const. 1963, Art I, § 16, Eff. Jan. 1, 1964; imprisonment for debt in violation of Const. 1963, Art I, § 13, Eff. Jan. 1, 1964; conspiracy to deny William Yee the right to have the perpetrators of crimes against him prosecuted as contemplated by Const. 1963, Art I, § 24, Eff. Jan. 1, 1964; conspiracy to perjury and subornation of perjury per MCL 750.422 and 750.424, amended complaint, paragraph 288, (R.2-2, page 25-27).

7. Judge Lostracco did not allow William Yee to add Philip Dulmage as a party to File No. 95-5692-DM, amended complaint paragraph 448, (R. 2-3, page 7).

8. On October 18, 2005 Judge Lostracco did issue an order for William Yee to pay Christine Roche' with the intent of violating 18 USC § 1962 over $100,000, amended complaint paragraph 461, (R.2-3, page 10-11).

9. On December 15th, 2005 Hon Gerald Lostracco – P16808 found William Yee in contempt

and ordered him to pay $5,000.00 in fines and $101,267.70 by December 21st, 2005 or go to jail for 30 days, amended complaint paragraph 478, (R. 2-3, page 13).

10. Since July 31st, 1997 Christine Roche' and Philip Dulmage have been married, amended complaint paragraph 449, (R. 2-3, page 7).

11. Since July 31st, 1997 Christine Roche' has received continuous financial and legal support from Philip Dulmage, amended complaint paragraph 450, (R. 2-3, page 7).

12. Since July 31st, 1997 Christine Roche' and Philip Dulmage have concealed the financial support from Philip Dulmage to Christine Roche', amended complaint paragraph 451, (R. 2-3, page 7).

13. Judge Lostracco did abuse his judicial discretion with the intent of violating 18 USC § 1962, amended complaint paragraph 458, (R. 2-3, page 9).

14. Judge Lostracco ordered William Yee to go to jail for 30 days starting December 21st, 2005, amended complaint paragraph 458, (R. 2-3, page 17).

15. Philip Dulmage and Christine Roche' broke into 5281 Lake Drive, on or about December 22, 2005 and stole William Yee's office equipment including computers and printers from 5281 Lake Drive which were necessary for filing a claim of appeal and application for leave to appeal, amended omplaint [sic] paragraph 458, (R. 2-3, page 17).

16. William Yee told Philip Dulmage that Philip Dulmage was trespassing at 5281 Lake Drive, had stolen thousands of dollars worth of computers, printers and office equipment from 5281 Lake Drive belonging to William Yee and that was a felony, amended complaint paragraphs 506-507, (R. 2-3, page 18).

17. Philip Dulmage then followed William Yee to the front door, pushed William Yee and injured his back, amended complaint paragraph 508, (R. 2-3, page 18).

18. Judge Lostracco, Philip Dulmage and Christine Roche' did intend to violate 18 USC § 1962 by putting William Yee in jail for the purpose of stealing his legal and medical research and medical records in violation of his rights to be protected for unreasonable search and seizure in violation of Const. 1963, Art. I, § 11, Eff. Jan. 1, 1964, amended complaint paragraph 520, (R. 2-3, page 20).

19. The amended complaint alleged that Defendant Judges made findings of fact without an evidentiary hearing in violation of *Simko v Blake,* 448 Mich. 648, 668; 532 NW2d 842 (1995) 'A silent record supports no finding of fact at all,'" paragraph 148 (R.2, page 40); Paragraph 381, (R.2-2, page 96).

20. The amended complaint alleged that defendant-appellee judges did not follow precedent as required by the principle of stare decisis and *Midwest Energy v. PSC,* 268 Mich. App. 521, 526; 708 N.W.2d 147 (2005) paragraph 151, (R.2, page 40-41); paragraph

152, (R.2, page 41); paragraph 212, (R.2-2, page 57-58); Paragraph 214, (R.2-2, page 58).

21. The amended complaint alleged a conspiracy by the defendant-appellees in paragraph 153, (R.2, Apx. page 41); paragraph 154, (R.2, page 41); paragraph 159, (R.2, page 42); paragraph 173 (R.2, page 45-46).

22. The amended complaint was filed pursuant to 18 USC § 1964(c) and did allege that the defendant-appellees did engage in a course of conduct in a criminal enterprise and conspiracy with the intent of violating 18 USC § 1962, paragraph 9, (R.2, page 9), paragraph 134, (R.2, page 38), paragraph 539, (R.2-3, page 24).

23. The amended complaint listed acts be each Appellee in furtherance of the conspiracy in paragraph 9, (R.2, page 9); paragraph 153, (R.2, Apx. page 41); paragraph 159, (R.2, page 42); paragraph 170 (R.2, page 44-45); paragraph 234, (R.2-2, page 13); paragraph 238, (R.2-2, page 14); Paragraph 241-242, (R.2-2, page 14-15); paragraph 251, (R.2-2, page 16); Paragraph 264, (R.2-2, page 19); paragraph 271, (R.2-2, page 21); paragraph 287, (R.2-2, page 25-27); Paragraph 293, (R.2-2, page 28); paragraph 306, (R.2-2, page 31); paragraph 318, (R.2-2, page 32); paragraph 319, (R.2-2, page 33); paragraph 323, (R.2-2, page 34); paragraph 327, (R.2-2, page 34-35); paragraph 337, (R.2-2, page 36); paragraph 339, (R.2-2, page 37-38); paragraph 350, (R.2-2, page 39); paragraph 357, (R.2-2, page 41); paragraph 369-374, (R.2-2,

page 43-44); Paragraph 376, (R.2-2, page 45); Paragraph 381, (R.2-2, page 46); paragraph 402 (R.2-2, Page 49); paragraph 446 (R.2-3, Apx. Page 6-7); Paragraph 458 (R.2-3, Page 9); paragraph 472, (R.2-3, page 12); paragraph 520, (R.2-3, page 20; paragraph 521, (R.2-3, page 21); paragraph 522, (R.2-3, page 121); paragraph 550, (R.2-3, page 126-127); paragraph 551, (R.2-3, page 27); paragraph 563, (R.2-3, page 29); paragraph 568 (R.2-3, page 31); paragraph 654 page (R.2-3, Apx. 49-50).

24. The amended complaint alleged that the Appellees did employ a pattern of manipulation and violation of the Michigan Court Rules, violation of state and federal criminal statutes, and abuse of discretion with the purpose of turning the Michigan Courts into a device for transferring money and property in violation of due process of law as part of a pattern of racketeering activities including but not limited to robbery, assault and battery, mail fraud, obstruction of justice by judges and prosecutors, obstruction of state and local law enforcement, peonage by exploitation of the child support and alimony laws during divorce, unlawful transfer of property derived from the criminal conspiracy, and fraud as contemplated by *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985) in paragraph 11, (R.2, page 9-10).

25. The amended complaint alleged that the Defendant Judges and attorneys violated numerous court rules including MCR 2.116(G) paragraph 171 (R.2, page 45); MCR 2.116(C)(4), MCR 2.116(C)(8),

MCR 2.403(M), paragraph 173 (R.2, page 45-46); MCR 2.119, MCR 2.108(B) paragraph 181 (R.2, page 47); MCR 2.116(C)(8), MCR 2.116(C)(7) paragraph 186 (R.2, page 47-48); MCR 3.903(A)(18)(b), formerly MCR 5.903(A)(18)(b), paragraph 241-242, (R.2-2, page 64-65); MCR 3.923, formerly MCR 5.923 Paragraph 251-262, (R.2-2, page 66); MCR 2.119(F) paragraph 271, (R.2-2, page 71); MCR 5.001 and MCR 2.119(F)(1) paragraph 276, (R.2-2, page 72-73); MCR 2.209 paragraph 323, (R.2-2, page 84); MCR 3.206(6) Paragraph 471 (R.2-2, Page 112); MCR 3.206(6) Paragraph 471 (R.2-2, Page 112); MCR 3.206(6); MCR 2.614 (A)(1) paragraph 480, (R.2, Apx. page 114); MCR 7.205(A) paragraph 498, (R.2, page 117); MCR 2.614(A)(1) paragraph 521, (R.2, page 121); MCR 8.111(D) paragraph 550, (R.2, Apx. page 126-127);

26. The amended complaint alleged that "In Michigan the act of each conspirator is the act of all in the eyes of the law, even if all of the actors were not aware of everything being done" per *People v. Grant,* 455 Mich. 221, 236; 565 N.W.2d 389 (1997) paragraph 685 (R.2, page 158-159).

IV: Order of 01-24-2008 Affirming the Court Below

27. On January 24, 2008 the panel rendered a decision affirming the district courts dismissal upon the grounds that the *Rooker-Feldman doctrine* deprives it of subject matter jurisdiction, Appendix pages i-ii:

Under the *Rooker-Feldman,* federal courts lack jurisdiction to review a case litigated and decided in state court, because only the United States Supreme Court has jurisdiction to correct state court judgments. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 483 n. 16 (1983); *Rooker v Fidelity Trust Co.,* 263 U.S. 413, 415, 415-16 (1923); *Patmon v Michigan Supreme Court,* 224 F.2d 504, 506-07 (6th Cir. 2000). Federal courts also lack jurisdiction to review constitutional claims that are inextricably intertwined with the state court's decision. *Feldman,* 460 U.S. at 486-87; *Patmon,* 224 F.3d at 509-10. A plaintiff's claims are inextricably intertwined with the state court's decision if the federal claims can succeed only to the extent that the state court wrongly decided the issues before it, *Catz v Chalker,* 142 F.3d 279 (6th Cir. 1998), and if the federal claims assert specific challenges to the state court proceedings, rather than a general challenge to the consititutionality [sic] of the state law. *Patmon,* 224 F.3d at 509-10; *Catz,* 142 F3d at 293.

V: *Rooker-Feldman doctrine:* Exception *Powers v. Hamilton County*

28. The standard of review of the district court's grant of summary judgment de novo. *Watkins v. Battle Creek,* 273 F.3d 682, 685 (6th Cir.2001).

29. The *Rooker-Feldman doctrine* does not apply in this case pursuant to *Powers v. Hamilton County,* 501 F.3d 592, 606 (6th Cir. 2007):

> The *Rooker-Feldman* doctrine has no bearing on Powers's claims because he does not allege that he was deprived of his constitutional rights by the state-court judgment, but rather by the Public Defender's conduct in failing to ask for an indigency hearing as a prerequisite to his incarceration. Assertions of injury that do not implicate state-court judgments are beyond the purview of the *Rooker-Feldman* doctrine. *See McCormick v. Braverman,* 451 F.3d 382, 392-93 (6th Cir.2006(holding *Rooker-Feldman* inapplicable because the plaintiff did not attack the state-court judgments but "assert[ed] ndependent [sic] claims that those state court judgments were [improperly] procured by" the defendants); *Todd v. Weltman, Weinberg, & Reis Co., L.P.A.,* 434 F.3d 432, 436-37 (6th Cir.2006) (holding *Rooker-Feldman* not triggered because the plaintiff did not allege that he was injured by the state-court judgment, but instead filed an independent federal claim that he was injured by the defendant's filing of a false affidavit in the state-court proceeding).

30. Appellant William Yee has made numerous allegations of independent claims that the state court judgments were improperly procured by the defendants. William Yee incorporates by reference paragraphs 1-26 above.

31. Appellant William Yee asserts that *Roche' v. Yee,* 95-5692-DM, before appellee-defendant Judge Lostracco remains open and is not finally resolved.

32. The amended complaint asserts, paragraph 280 (R 2-2, page 23-24) that:

> the Hon. Gerald D. Lostracco – P16808, the 35th Circuit Court, the Shiawassee County Prosecutor's Office, Randy O. Colbry – P33053, Craig Wininger (P57058), the Shiawassee County Friend of the Court, Louis Belzer –P27251, Daniel J. Loomis – P16792, Christine K. Gazella, J. Kevin McKay – P44674, Mr. Dulmage, and Mr. Dunchock, did engage in a course of conduct in support of a criminal enterprise and conspiracy shared by the defendants listed in paragraph 8above, (which includes Mr. Demis), with the intent of violating with the intent of violating [sic] 18 USC § 1962.

33. The amended complaint alleges an independent cause of action based upon the fact that Mr. Demis committed perjury in violation of MCL 750.422 with the intent of violating with the intent of violating 18 USC § 1962, amended complaint, paragraph 401-402 (R.2-2, page 49).

33. The amended complaint has identified acts by each of the defendants giving rise to liability for the damages incurred by Plaintiff, paragraph 23 above.

34. The amended complaint alleges numerous independent causes of action created by defendant-appellees' violation of court rules, paragraph 25 above

35. The amended complaint has made allegations of conspiracies in paragraph 21 above making each liable for the acts of all others pursuant to *People v. Grant,* 455 Mich. 221, 236; 565 N.W.2d 389 (1997), paragraph 26 above.

36. The amended complaint alleges a separate cause of action pursuant to 18 USC § 1964(c) and did allege that the defendant-appellees did engage in a course of conduct in a criminal enterprise and conspiracy with the intent of violating 18 USC § 1962, paragraph 9, (R.2, Apx. page 9, paragraph 134, (R.2, page 38), paragraph 539, (R.2-3, page 124).

37. The amended complaint alleges many separate causes of action, paragraph 6 above.

38. The amended complaint alleges predicate criminal conduct by the Judges, large law firms, attorneys, prosecutors, attorney generals, state agencies and other defendants giving rise to independent causes of action contemplated by 18 USC § 1962 and 18 USC § 1964(c).

39. The amended complaint alleges acts giving rise to independent causes of action contemplated 42 USC § 1983 and 42 USC § 1985.

40. In fact all of the causes of actions in the amended complaint, R.2 R.2-1, R.2-2 and R.2-3 are

independent causes of action contemplated by *Powers v. Hamilton* County, 501 F.3d 592, 606 (6th Cir. 2007) and therefore subject to the jurisdiction of the United States District Court, Eastern District of Michigan.

VI: *Catz v. Chalker* is Inapplicable

41. Appellant William Yee incorporates all 40 paragraphs above. The standard of review of the district court's grant of summary judgment de novo. *Watkins v. Battle Creek,* 273 F.3d 682, 685 (6th Cir.2001).

42. The court relies upon *Catz v. Chalker,* 142 F.3d 279, 289 (6th Cir. 1998), which is not applicable as violation of due process does not support a judgment:

> Further, the same court has recognized that a judgment entered in violation of due process of law may be void. See *Phoenix Metals v. Roth,* 284 P.2d 645, 648 (Ariz. 1955). And there is no time limit in which relief from a void judgment or order must be sought. *Martin v. Martin,* 893 P.2d 11, 14 (Ariz.Ct.App. 1994).

43. Further *Catz v. Chalker,* 142 F.3d 279, 291-292 (6th Cir. 1998) at footnotes 58 and 60 precludes jurisdiction over only core marital issues of divorce, alimony, or child custody decrees and not other issues such as due process:

> 58 . . . Finally, Catz is not asking the district court to involve itself in the sort of questions

attendant to domestic relations that are assumed to be within the special expertise of the state courts - for instance, the merits of a divorce action; what custody determination would be in the best interest of a child; what would constitute an equitable division of property; and the like. Instead, Catz asks the court to examine whether certain judicial proceedings, which happened to involve a divorce, comported with the federal constitutional guarantee of due process. This is a sphere in which the federal courts may claim an expertise at least equal to that of the state courts.

60 . . . The Court also noted that "[t]he better reasoned views among the Courts of Appeals have similarly stated the domestic relations exception as narrowly confined to suits for divorce, alimony, or child custody decrees

VII. The district court has jurisdiction

44. The standard of review of the district court's grant of summary judgment de novo. *Watkins v. Battle Creek,* 273 F.3d 682, 685 (6th Cir.2001).

45. Plaintiff has made claims for actions arising under the Constitution and laws as contemplated by 28 U.S.C. § 1331, paragraphs 6, 18, 22 above.

46. The district court below has subject matter jurisdiction over all federal causes of action asserted in the amended complaint arising under the Constitution, laws, or treaties of the United States. "A claim

arises under federal law when the plaintiff's statement of his own cause of action shows that it is based upon federal laws or the federal Constitution." *Cobb v. Contract Transp. Inc.*, 452 F.3d 543, 548 (6th Cir.2006).

47. The district court has pendent jurisdiction over all state causes of action asserted in the amended complaint pursuant to 28 U.S.C. § 1367.

47. Based upon the facts and law above Appellant-Plaintiff William Yee asserts that the district court below did in fact improperly dismiss the amended complaint with prejudice on all federal claims, Judgment, (R 207, page 1)

> This Judgment of Dismissal is with prejudice as to all of Plaintiff's claims in this action except Plaintiff's state law claims against Defendants Phillip Dulmage and Christine Roche. With respect to the state law claims

VI: Relief Requested.

48. Appellant William Yee respectfully requests that this court find that:

A. The *Rooker-Feldman doctrine* does not deprive district courts of jurisdiction over causes of action lin [sic] the amended complaint, (R 2, R 2-1. R 2-2 and R 2-3.

B. The amended complaint, (R.2 R.2-1, R.2-2 and R.2-3), alleges causes of action independent of injuries caused by state court judgments.

C. *Catz v. Chalker,* 142 F.3d 279 (6th Cir. 1998) precludes jurisdiction over only core marital issues involving decrees of divorce, alimony, or child custody and does not preclude jurisdiction over issues such as conspiracy to violate 18 USC § 1962 by means of predicate crimes that included extortion, theft of property, violation of the Elliot-Larson Civil Rights Act, MCL 37.2101 *et seq*; violation of 42 USC § 1983, conspiracy in violation of 42 USC § 1985; assault and battery in violation of 18 USC § 245(b)(2)(F); conspiracy to violate equal protection of the laws in violation of Const. 1963, Art I, § 2, Eff. Jan. 1, 1964; conspiracy to illegal search and seizure in violation of the doctor patient privilege of privacy and the attorney client right to privacy in violation of Const. 1963, Art I, § 11, Eff. Jan. 1, 1964; home invasion in violation of MCL 750.110(2); violation of Habeus Corpus and Const. 1963, Art I, § 12, Eff. Jan. 1, 1964; violation of the right to represent one's self as contemplated by Const. 1963, Art I, § 13, Eff. Jan. 1, 1964; denial of a jury trial as contemplated by Const. 1963, Art I, § 14, Eff. Jan. 1, 1964; cruel and unusual punishment as contemplated by Const. 1963, Art I, § 16, Eff. Jan. 1, 1964; imprisonment for debt in violation of Const. 1963, Art I, § 13, Eff. Jan. 1, 1964; conspiracy to deny William Yee the right to have the perpetrators of crimes against him prosecuted as contemplated by Const. 1963, Art I, § 24, Eff. Jan. 1, 1964; conspiracy to perjury and subornation of perjury per MCL 750.422 and 750.424, amended complaint, paragraph 288, (R.2-2, page 25-27).

D. The district court has subject matter jurisdiction over all federal actions alleged in the amended complaint, (R.2 R.2-1, R.2-2 and R.2-3) pursuant to 28 U.S.C. § 1331, *Cobb v. Contract Transp., Inc.*, 452 F.3d 543, 548 (6th Cir.2006)

E. That the district court has jurisdiction over all pendant state causes of action asserted in the amended complaint, (R, R-1, R-2, R-3), pursuant to 28 U.S.C. § 1367.

F. That based ased [sic] upon the pleadings and the court record the district court did err by dismissing the amended complaint with prejudice.

49. Plaintiff-Appellant William Yee respectfully requests that this court order::

G. That the Judgment of Dismissal by the district court below is reversed;

H. That there be a partial summary judgment in favor of Plaintiffs in the court below for attorneys fees and costs payable monthly to plaintiffs as they accrue so that the plaintiffs below may be relieved of the burdens of representing themselves;

I. That the costs of the trial and appeal to date be awarded to Plaintiffs, with plaintiff William Yee to receive payment for his time at a value commensurate with the highest rate charged by any of the defendant attorneys;

J. That the trial court grant Plaintiffs reasonable time to find and retain attorneys to prosecute

their claims before further action is allowed in the court below;

Appellant asserts his best attempt to comply with all requirement [sic] including FRAP 32(a)(7)(B)(iii), 15 pages 3,652 words.

(s) William Yee P35984, In Pro Per, 2/6/08,

Plaintiff-Appellant, xxxxx, xxxxx, xx xxxxx
xxx xxx-xxxx

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(2)

FILED
JUN 27 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-1471

In The Supreme Court of the United States

WILLIAM R. YEE,

Petitioner,

v.

STATE COURT ADMINISTRATIVE OFFICE, ET AL.,

Respondents.

Respondents Michael J. Guss and Harvey Kruse, P.C.'s Brief in Opposition to Petition For Writ Of Certiorari To The United States Court of Appeals For the Sixth Circuit

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INTRODUCTION

This case involves a medical doctor and licensed attorney who has had a substantial amount of contact with the Michigan judicial system concerning land he owned on Bambi Lake and a bitter divorce and custody battle. Both the criminal justice system and the civil side of Michigan's legal system have had brushes with Mr. Yee.

The only contacts that Harvey Kruse, P.C., and Michael J. Guss, a shareholder in the firm's Flint, Michigan office, have had with Mr. Yee arise out of a civil lawsuit he filed a number of years ago. Suffice it to say that Mr. Yee was unsuccessful in that case and now has sued Harvey Kruse, P.C. and Mr. Guss for supposedly joining some sort of civil conspiracy during the course of their representation of an adverse party in that litigation. The only allegation in the entire 163-page complaint containing 709 separately numbered paragraphs referring specifically to Mr. Guss and Harvey Kruse appears at Page 48 in Paragraph 189. In that paragraph, everyone from the Governor of the State of Michigan to the Department of Natural Resources to Harvey Kruse, P.C. and a former associate, Alan R. Sullivan, are alleged to have joined a conspiracy to deprive Mr. Yee of his civil rights, his property, and his money. There are absolutely no other allegations specifically targeted at Harvey Kruse, P.C. or Mr. Guss in the entire complaint.

As will be demonstrated below, such conclusory and nonspecific allegations do not suffice under Michigan law, and, as a result, the District Court properly granted Respondents' motions to

dismiss for failure to state a claim. In addition, based solely on the allegations in Mr. Yee's complaint, the District Court also relied upon a variety of other valid and proper legal principles to dismiss all of the defendants. The Sixth Circuit Court of Appeals subsequently affirmed without oral argument.

ARGUMENT

I. PLAINTIFF'S CLAIM AGAINST HARVEY KRUSE, P.C., AND MICHAEL J. GUSS FOR JOINING A CONSPIRACY IS INSUFFICIENT AS A MATTER OF LAW

In order to state a valid claim for civil conspiracy, a plaintiff must plead the following essential elements: 1) concerted action; 2) by a combination of two or more persons; 3) to accomplish an unlawful purpose; or 4) to accomplish a lawful purpose by unlawful means. *Fenestra, Inc. v. Gulf American Land Corp,* 377 Mich. 565, 593, 141 N.W.2d 36 (1966). See also *Zmija v. Baron,* 119 Mich. App. 524, 537, 326 N.W.2d 908 (1982) (Walsh, J. concurring in part); *Mays v. Three Rivers Rubber Corp.,* 135 Mich. App. 42, 48, 352 N.W.2d 339 (1984).

In addition, there can be "no *civil* conspiracy if [defendants] were acting as agents within the scope of the agency agreement." See, e.g., *Landmark Savings and Loan v. Loeb Rhoades, Hornblower and Co.,* 527 F.2d 206, 209 (E.D. Mich. 1981); *Hodges v. Tomberlin,* 510 F.2d 1280, 1286 (S.D. Ga. 1980).

In *Blair v. Checker Cab Co.,* 219 Mich. App. 667, 674, 558 N.W.2d 439 (1996), the Michigan

Court of Appeals held that "an agent or employee cannot be considered a separate entity from its principal or corporate employer, respectively, 'as long as the agent or employee acts only within the scope of his agency (or) employment.'" *Id.* quoting *Metroclub, Inc. v. Schostak Bros. & Co., Inc.*, 80 Mich. App. 417, 420; 280 N.W.2d 553 (1979) ("an attorney often acts as his client's agent, and his authority may be governed by what he is expressly authorized to do as well as by his implied authority.") *Unipro Prop., Inc. v. Morganrath*, 260 Mich. App. 442, 447; 678 N.W.2d 638 (2004).

As these cases indicate, merely alleging all of the essential elements of a civil conspiracy – which Petitioner failed to do in this case – is not enough. In addition, a plaintiff must also plead that the attorney or the law firm acted outside the scope of their agency in conspiring to deprive someone of their rights. No such allegations have been made in this case and, therefore, the District Court's dismissal of this case was affirmed by the Sixth Circuit.

II. MR. GUSS AND HARVEY KRUSE, P.C., ADOPT AND INCORPORATE BY REFERENCE THE ARGUMENTS ADVANCED BY APPELLEES IN THE SIXTH CIRCUIT AND RESPONDENTS IN THIS COURT

Scores of other parties will be filing or already have filed briefs in this case. Rather than burden this Court with a repetitive recitation of the numerous legal principles the District Court relied upon, Mr. Guss and Harvey Kruse, P.C., adopt and

incorporate them by reference pursuant to Fed. R. App. P. 28(i). In addition, the briefs filed by the Appellees in the Sixth Circuit did an excellent job of reviewing the law, and those are all hereby adopted and incorporated by reference as well.

In a nutshell, however, the District Court and the Sixth Circuit relied upon at least three independent legal grounds that were each sufficient to dispose of this case: 1) the *Rooker-Feldman* doctrine; 2) collateral estoppel; and 3) the statute of limitations. Each is briefly addressed below.

A. THE ROOKER-FELDMAN DOCTRINE PREVENTS RE-LITIGATION OF STATE COURT DECISIONS

The *Rooker-Feldman* gets its name from two cases decided by the United States Supreme Court. In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 68 L. Ed. 392, 44 S. Ct. 149 (1923), a lawsuit was filed challenging an Indiana state court judgment that had been affirmed by the Indiana Supreme Court. Even though the case involved claims that the United States Constitution had been violated, the United States Supreme Court concluded that the only way to challenge the Indiana Supreme Court's decision was by way of an appeal directly to the United States Supreme Court, not a separate original proceeding started in a United States District Court.

Similarly, in *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983), a litigant who was unsuccessful in the federal system brought a second

round of litigation in the United States District Court, in which it sued the District of Columbia Court of Appeals. Again, the United States Supreme Court rejected the litigants' circuitous appeal and held that the only remedy the unsuccessful litigants had upon losing in the District of Columbia Court of Appeals was appealing directly to the United States Supreme Court, not initiating a separate proceeding.

In other words, the *Rooker-Feldman* doctrine provides that lower federal courts lack subject matter jurisdiction to engage in appellate review of state court proceedings. Thus, "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States District Court, based on the losing party's claim that the state judgment itself violates the loser's federal rights. *Johnson v. De Grandy,* 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994).

In this case, the Petitioner's entire case is premised on the assertion that the various state court proceedings in which he has been involved over the years have been wrongly decided. Under the *Rooker-Feldman* doctrine, the District Court lacks jurisdiction over these claims. The Petitioner has unsuccessfully litigated, many times, the Bambi Lake water level issue in circuit courts in Michigan, in the Michigan Court of Appeals, and in the Michigan Supreme Court. Undeterred, he has now initiated a new round of litigation in District Court seeking a remedy for wrongs he alleges that the Michigan state judicial system have visited upon him. The *Rooker-Feldman* doctrine prevents this circuitous manner of appeal.

B. THE DOCTRINE OF COLLATERAL ESTOPPEL PREVENTS LITIGANTS FROM RE-LITIGATING ISSUES THAT HAVE BEEN FULLY LITIGATED IN OTHER PROCEEDINGS

Even if the *Rooker-Feldman* doctrine does not apply, the District Court in this case also concluded that the doctrine of collateral estoppel prevents a re-litigation of these issues in the federal system. *Peterson Novelties, Inc. v. City of Berkley,* 305 F.3d 386, 394 (6th Cir. 2002), reiterated the general proposition that state court judgments have preclusive effect, citing *Migra v. Warren City School District Board of Education,* 465 U.S. 75, 81, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1984). "Where issues of fact or law have been finally decided by a court of competent jurisdiction in one legal action which are essential to the maintenance of another legal action, it is universally held that the second action must fail." *Jones v. Chambers,* 353 Mich. 674, 680 (1958). In this case, Petitioner's complaint, filed in the United States District Court for the Eastern District of Michigan, challenges the propriety and validity of numerous state court decisions and orders. Mr. Yee has fully litigated those issues in four separate state trial courts and in numerous appeals within the Michigan appellate system. He has also, on at least two occasions, filed Applications for Leave to Appeal to the Michigan Supreme Court and has at least twice sought a Writ of Certiorari from this Court in connection with the state court proceedings he was pursuing. He cannot now get around all of those decisions by starting an entirely new round of litigation in the federal system. For that reason, both the District Court and the Sixth Circuit

concluded that the doctrine of collateral estoppel barred Mr. Yee from attempting yet another re-litigation of claims that he has lost time and time again.

C. THE STATUTE OF LIMITATIONS HAS RUN ON PETITIONER'S CLAIMS

In addition to the *Rooker-Feldman* doctrine and the application of collateral estoppel principles, Petitioner's complaint against Michael Guss and Harvey Kruse, P.C., is also barred by the statute of limitations.

The statute of limitations for most of the claims being made by Mr. Yee against these two Respondents is three years. MCLA 600.5805(10). See also *Chippewa Trading Co. v. Cox,* 365 F.3d 538, 543 (6th Cir. 2004). For example, to the extent that Petitioner's claims relate to the infliction of emotional distress, state civil rights claims, and civil conspiracy claims, the three year statute of limitations for personal injury cases in Michigan applies. See, *e.g., Nelson v. Ho,* 222 Mich. App. 74, 564 N.W.2d 482, 487 (1997) (emotional distress claims), *Timko v. Oakwood Custom Coating Inc.,* 244 Mich. App. 234, 625 N.W.2d 101, 204 (2001) (state civil rights claims) and *Mays v. Three Rivers Rubber Corp,* 134 Mich. App. 42; 352 N.W.2d 339 (1984) (civil conspiracy claims). Even Petitioner's RICO claims are subject to a four year statute of limitations. 18 U.S.C. § 1961, *et seq.; Rotella v. Wood,* 528 U.S. 549, 553, 120 S. Ct. 1075, 145 L. Ed. 2d 1047 (2000).

Since all of the Petitioner's claims arise out of

an alleged "conspiracy" between the Respondents which dates back to April of 2000, and since Petitioner did not file his complaint in this case until over six years after these claims arose, they are all clearly barred as a matter of law. Both the United States District Court and the Sixth Circuit Court of Appeals agreed, dismissing his claims against Michael Guss and Harvey Kruse, P.C. There is no reason for the highest Court in the land to revisit that decision.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

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In The

Supreme Court of the United States

WILLIAM R. YEE,

Petitioner,

v.

MICHIGAN SUPREME COURT, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF

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INTRODUCTION

The Shiawassee Sheriff issued a ticket to Petitioner William Yee, hereinafter Mr. Yee, for loud music on William Yee's Property. The ticket was dismissed and no fine imposed. Mr. Yee asserts that the Cumming Lake Dam owners and operators raised Bambi Lake above 799.0 feet without a permit, a felony in the state of Michigan. Mr. Yee went onto Bambi Lake to photograph trees standing in water as proof of the felonious raising of Bambi Lake and flooding of Mr. Yee's property. The Shiawassee County Prosecutor Randy Colbry issued a warrant for Mr. Yee's arrest for stalking by photographing a crime scene and collecting evidence rather than arresting and prosecuting the owners and operators of Bambi Lake for raising Bambi Lake without a permit. William Yee presented himself to the State Police on multiple occasions. Mr. Cobry instructed the State Police not to arrest William Yee. This was felonious obstruction of Justice on the part of the Shiawassee County Prosecutor Randy Colbry. Respondent Dale Burmeister's pleading that William Yee had brushes with the law is an improper ad hominem attack and intentional distortion of the facts.

Respondents Michael J. Guss and Harvey Kruse, P.C. were in fact implicated in paragraphs 133 and 134 of the 1st Amended Complaint (R-2) in a conspiracy with Judge Fullerton and the MDEQ. It is a matter of public record that Michael J. Guss and Harvey Kruse, P.C., hereinafter respondents, did in fact represent George Braidwood and others in *Yee v.*

Shiawassee Co. Bd. of Comm'rs, 251 Mich. App. 379, 382, 651 N.W.2d 756 (2002), "*Harvey Kruse, P.C.* (by *Alan R. Sullivan*), for George Braidwood and others."

Respondents did in fact participate in the conspiracy with Judge Fullerton described in paragraphs 133 through 158 of the 1st Amended Complaint (R-2). Respondents continued their participation in the conspiracy when they did in fact take advantage of H. William Reising, Hon. John Connolly and Michael J. Mangapora's corruption of the mediation evaluation as described in paragraphs 159 through 166. Respondents continued their participation in the conspiracy when they used a trial brief as a motion for summary disposition in violation of *Oakwood Hospital v. Tobin*, 6 Mich. App. 566, 572, 149 N.W.2d 890 (1967), see paragraphs 167-223 of the 1st Amended Complaint (R-2).

ARGUMENT: I Criminal Acts Are Outside the Scope of Agency

Although at all times Respondents were acting as attorneys in a court of law by representing Mr. Braidwood and others, the scope of there agency cannot include obstruction of justice and other alleged crimes that corrupt the integrity of the court. Pursuant to paragraph 2 of the 1st amended complaint (R-2) the Respondents stand before this court as criminals participating in a criminal enterprise manifested by a pattern of racketeering conduct by the Respondents in violation of 18 U.S.C. § 1962 giving rise to

predicate federal claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc., giving rise to an 18 U.S.C. § 1964(c) umbrella a claim with jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367. See *Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995), "considering a Rule 12(b)(6) motion must accept the well-pled factual allegations of the complaint as true and construe all reasonable inferences in favor of the Petitioner."

ARGUMENT: II A: Rooker Feldman Is Narrow And Does Not Apply

Rooker Feldman applies to injuries caused by judgments and not to a criminal process that leads to the judgments. Mr. Yee asserts that *Rooker Feldman* cannot shield Appellants for criminal acts in violation of 18 U.S.C. § 1962 giving rise to predicate federal claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc., giving rise to an 18 U.S.C. § 1964(c) umbrella a claim with jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367.

See *McCormick v. Braverman*, 451 F.3d 382, 392 (6th Cir. 2006), "Instead, Plaintiff asserts *independent claims* that those state court judgments were procured by certain Defendants through fraud, misrepresentation, or other improper means."

ARGUMENT: II B: Collateral Estoppel Does Not Apply

The issues of criminal violation by the Michigan State Courts was not and could not be raised in those courts. The Judges were a party to the criminal conspiracy and committing obstruction of justice by allowing violation of the court rules and criminal conduct inherent in violation of 18 U.S.C. § 1962 giving rise to predicate federal claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc., giving rise to an 18 U.S.C. § 1964(c) umbrella claim with jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and jurisdiction of predicate states causes of actions intrinsic to federal causes of action pursuant to 28 U.S.C. § 1367. Therefore collateral estoppel cannot apply.

ARGUMENT II C: The Statute of Limitations Does Not Apply

The Respondents have not recanted, abandoned or otherwise done any act to stop the conspiracy.

Therefore the statute of limitation is tolled in regards to claims.

Mr. Yee argues that his claims are not barred by any statute of limitations because defendants' continuing trespass and continuing conspiracy tolls the limitations period. The flooding of Mr. Yee's property and criminal conspiracy continues to this day as ongoing torts with the statute of limitations tolled pursuant to *Sable v. General Motors Corp.*, 90 F.3d 171, 176 (6th Cir. Mich. 1996):

> Plaintiff quotes *Oakwood Homeowners Ass'n, Inc. v. Ford Motor Co.*, 77 Mich. App. 197, 258 N.W.2d 475 (1977):
>
> > "Therefore, in the normal pollution case, since the tort is committed every day, the cause of action will accrue up to the time of trial." Id. At 220 n. 7, 258 N.W.2d 475. Plaintiff also cites Michigan cases in which a permanent sewer line running under a plaintiff's house was held to be a continuing tort that tolled the limitations period. See, e.g., *Defnet v. City of Detroit*, 327 Mich. 254, 41 N.W.2d 539 (1950); *Hodgeson v. Genesee County Drain Comm*, 52 Mich. App. 411, 217 N.W.2d 395 (1974). Plaintiff argues that the permanent trespass of hazardous waste on its land is analogous to the permanent presence of the sewage lines held to constitute a continuing

> trespass in *Defnet and Hodgeson*. . . . The Court held that plaintiff's claim was not tolled under the continuing wrongful-acts doctrine because "a continuing wrong is established by continual tortuous acts, not by continual harmful effects from an original completed act."

Finally, the act of one is the act of all in a conspiracy pursuant to *People v. Grant*, 455 Mich. 221, 236, 565 N.W.2d 389 (1997):

> The gist of conspiracy is the unlawful agreement. People v Carter, 415 Mich. 558, 568; 330 N.W.2d 314 (1982). A conspirator need not participate in all the objects of the conspiracy. People v Garska, 303 Mich. 313; 6 N.W.2d 527 (1942). In fact, he need not even know all the other co-conspirators. People v DeLano, 318 Mich. 557, 567; 28 N.W.2d 909 (1947), cert. den. 334 U.S. 818; 68 S. Ct. 1082; 92 L. Ed. 1748 (1948). In fact:
>
> "It is a general rule that each conspirator is criminally responsible for the acts of his associate committed in furtherance of the common design and before the accomplishment thereof, the act of one or more being in contemplation of law the act of all. 15A CJS, Conspiracy, § 74, p 825."

CONCLUSION

The criminal conspiracy continues in the Michigan Courts. The United States Supreme Court should grant Certiorari as the time is ripe to stop criminal corruption in the Michigan Courts.

The United States Supreme Court should grant review on the record, without a Joint Appendix, as there has been no evidentiary hearing, and the matter stands before this court based upon pleadings and motions with no testimony or other evidence to contemplate.

Respectfully submitted,

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No. 07-1471

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In The Supreme Court of the United States

WILLIAM R. YEE,
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v.

MICHIGAN SUPREME COURT, et al,
Respondents.

On Petition For Writ Of Certiorari

To The United States Court Of Appeals

For The Sixth Circuit

Rule 44(2) Petition for Rehearing

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INTRODUCTION

This case was originally filed in the United States District Court, Eastern District of Michigan based upon a criminal conspiracy with the intent of violating 18 USC § 1962 giving rise to a civil action in the United States District Court, Eastern District of Michigan under an 18 USC § 1964(c) umbrella a claim with predicate federal claims including 42 USC § 1983, 42 USC § 1985, 18 U.S.C. § 241, 18 U.S.C. § 1341, and predicate state law claims that include extortion, theft, conspiracy, assault and battery, home invasion, illegal search and seizure etc, with jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

The clerk of the trial court below filed defaults against respondents Christine Roche' and Philip Dulmage. Respondents Philip Dulmage and Christine are not Judges, lawyers or government officials with any form of immunity.

The District court dismissed the complaint with prejudice against Philip Dulmage, Christine Roche', Judge Lostracco, Mr. Loomis and the rest of the Respondents based upon Judicial Immunity, the *Rooker-Feldman* doctrine, Judicial and quasi-judicial immunity and a variety of other theories.

Since the dismissal by the trial court below, respondents Philip Dulmage, Christine Roche, Judge Lostracco, and Mr. Loomis have continued their criminal conspiracy to deprive Petitioner William Yee of money, property and due process of law in *Roche' v Yee*, 95-5692-DM.

Rule 44(2) intervening circumstances

Since the trial court dismissed this case Petitioner served Respondents Judge Lostracco and Mr. Loomis with a summons and complaint in 35th Circuit Court of Michigan, *Roch'e v Yee,* 95-5692 DM.

Petitioner attempted to file defaults against Respondents Judge Lostracco and Mr. Loomis, but Respondent Judge Lostracco instructed the Clerk of the Court not to accept and file defaults in *Roche' v Yee,* 95-5692 DM.

Petitioner filed a motion to make Respondents Judge Lostracco and Mr. Loomis defendants pursuant to *Thames .v Thames*, 191 Mich 299, 302; 477 NW2d 496 (1991):

> A divorce case is equitable in nature, and a court of equity molds its relief according to the character of the case. *Wiand v Wiand*, 178 Mich App 137, 144; 443 NW2d 464 (1989), quoting *Schaeffer v Scaheffer*, 106 Mich App 452, 457-458; 308 NW2d 226 (1981). Once the court acquires jurisdiction, it will do what is necessary to accord complete equity and conclude the controversy. *Wiand*, supra, p 144. Generally, a court has no authority to adjudicate the rights of third parties in divorce actions. Id., p 146. An exception to the general rule exists when it is claimed that a third party has conspired with one spouse to deprive the other spouse of an interest in the marital estate. Id. See also anno: Propriety of consideration of, and disposition as to, third

person's property claims in divorce litigation, 63 ALR3d 373.

Respondent Judge Lostrocco denied Petitioner's motion to file a summons and complaint against Respondent s Judge Lostrocco and Mr. Loomis.

Pursuant to MCR 2.118(D) the Summons and Complaint served upon Respondents Judge Lostracco and Mr. Loomis would be effective from 1995 and precede the complaint in the trial court below:

> MCR 2.118(D: Relation Back of Amendments. An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

Respondent Judge Lostrocco denied Petitioner the benefits of MCR 2.118(D). When Petitoner files another lawsuit, Respondent Judge Lostracco can now file a motion for dismissal grounded upon *res judicata* and the summary judgment and dismissal in the trial court below.

Petitioner filed motions for return of an illegal $5000.00 fine for contempt because it exceeded the $250.00 maximum and was imposed during and automatic stay created by a motion for a retrial and amended judgment. Respondent Judge Lostracco did in fact give $4,500.00 to

Respondent Christine Roche' instead of returning an illegal $5000.00 fine for contempt to Petitioner.

Relief Requested:

Petitioner moves this court to order the trial court below to reinstate the defaults against Respondents Christine Roche' and Philip Dulmage.

Petitioner moves this court to determine that at this time all people in positions of power, including Judges, Prosecutors, Attorney Generals, and government officials must follow the rules and find that *Rooker-Feldman*, judicial and quasi-judicial immunities cannot be a defense against civil suit for injuries proximately caused by crimes based upon intentional violation of court rules, state and federal criminal laws, *stare decisis* and corruption of the courts.

Petitioner moves this court to order the trial court to grant partial summary judgment for petitioner with respondents to pay all attorney fees and costs for discovery and trial in the trial court.

Petitioner moves the court to grant further relief to petitioner as appropriate to the public record in these matters.

These pleadings comply with Rule 44(2) and address continuing criminal behavior by Respondents since the Petition was filed in this court.

This Petition for rehearing has 827 words, less than the 3000 limit prescribed by Rule 33(1)(g)(viii)

WILLIAM R. YEE © (P35984), November 2, 2008

No. 07-1471

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On Petition For Writ Of Certiorari

To The United States Court Of Appeals

For The Sixth Circuit

Rule 44(2) Certificate of Compliance

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Rule 44(2) Certificate of Compliance

Petitioner William Yee asserts that the motion for reconsideration was filed for the purpose of moving the court to put the entire country on notice that all people in positions of power must follow the rules, that immunity is only applicable to unintentional collateral damage, and is not available for misfeasance, malfeasance, nonfeasance, obstruction of justice, or a pattern of criminal conduct as demonstrated by numerous violations of court rules, violations of *stare decisis*, and a criminal conspiracy that includes networking of the state judiciary with the executive office and state agencies under the supervision of the executive office.

Petitioner is not aware of any improper advantage to be obtained by paying the fee for this petition or filing this petition.

WILLIAM R. YEE (P35984), November 2, 2008
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